

**IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION),
MUVATTUPUZHA**

Present:- Sri. Atheek Rahman, Civil Judge (Senior Division)

Friday, the 11th day of April, 2025 / 21st Chaitra 1947

I.A.No. 3/2025 in O.S No.8/2025

Petitioners/Plaintiffs:-

- 1 Thomson Scaria S/o Scaria aged 35 years,
Elavumkudiyil Veedu, Pothanicadu Kara,
Pothanicadu Village, Kothamangalam Taluk.
- 2 Josna D/o James and W/o Thomson Scaria
aged 33 years Mooleplackal Veedu,
Paingottoor Kara, Paingottoor Grama Panchayat,
Kadavoor Village, Kothamangalam Taluk
Now residing at Elavumkudiyil Veedu,
Pothanicadu Village.
- 3 Iype Scaria S/o Iype aged 76 years,
Elavumkudiyil Veedu, Pothanicadu Kara,
Pothanicadu Village, Kothamangalam Taluk.
- 4 Mary Scaria W/o Iype aged 70 years,
Elavumkudiyil Veedu, Pothanicadu Kara,
Pothanicadu Village, Kothamangalam Taluk.
- 5 Thomas S/o Iype aged 65 years,
Elavumkudiyil Veedu, Pothanicadu Kara,
Pothanicadu Village, Kothamangalam Taluk.
- 6 James Thomas S/o Thomas aged 59 years,
Mooleplackal Veedu, Boundary of Paingottoor Gramapanchayat,
Paingottoor Kara, Kadavoor Village.
Kothamangalam Taluk.

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- 7 Rosamma James W/o James aged 58 years,
Mooleplackal Veedu, Boundary of Paingottoor Gramapanchayat,
Paingottoor Kara, Kadavoor Village.
Kothamangalam Taluk.

By Advs . K.R. Udayakumar, Minnu Raju
& Uma Maheswary Vinod

Respondents/Defendants 1,4,5:-

- 1 Aneesh Markose, S/o O.P Markose, aged 43 years,
Omblayil Veedu, Puthrukka Panchayat,
Thammanimattom Kara, Ikkaranadu South Village,
Kunnathunadu Taluk, Kolenchery P.O, Pin 682311.
- 2 C.P. Mathew (Mathew C Paulose) S/o Late Paulose,
aged 74 years, Cheerakathottathil Veedu,
Pothanikkadu Kara, Pothanikkadu Village,
Kothamangalam Taluk.
- 3 Loosy W/o C.P. Mathew (Mathew C Paulose)
aged 73 years Cheerakathottathil Veedu,
Pothanikkadu Kara, Pothanikkadu Village,
Kothamangalam Taluk.

R1 – By Adv. Mathew P Paul & Soumya Kumari T
R2 & R3 - Exparte

This petition is filed Under Order 38 Rule 5 and Section 151 of Civil Procedure Code and is coming on for hearing on 03.04.2025 in the presence of the above counsel and the Court on 11th day of April 2025 passed the following:-

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ORDER

This petition is filed by the petitioners/plaintiffs under Order XXXVIII Rule 5 and Section 151 of the Code of Civil Procedure, 1908. The petition is supported by an affidavit sworn by the 1st petitioner.

2. Brief averments in the affidavit in support of the petition are as follows:- The petitioners 1 and 2 are husband and wife, and they are working in Canada. The plaint schedule property is owned by respondents 1 and 2, as per document Nos.522/2004 and 19/2005 of SRO, Pothanicadu. The 1st respondent made a proposal to sell the plaint schedule property to the 1st petitioner in the presence of the 3rd petitioner. As the 2nd respondent was abroad, petitioners 1 and 3 contacted him through telephone, and he confirmed that the sale proposal made by the 1st respondent was with his knowledge and consent. Furthermore, he informed that the 4th respondent had executed power of attorney in favour of the 1st respondent. He also forwarded a copy of the power of attorney to the Whats app account of the 1st petitioner and stated the original power of attorney is with the 1st respondent. Following negotiations on 13.05.2024, the 1st petitioner transferred ₹25,00,000/- from his bank account to the

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bank account of the 1st respondent. Subsequently, on 18.05.2024, a sale agreement was executed between the 1st petitioner and the 1st respondent. The 1st respondent also signed in the agreement as an agent of the 2nd respondent. The sale consideration was fixed as at ₹4,50,00,000/-, and the 1st petitioner paid ₹1,00,00,000/- as part of sale consideration including ₹25,00,000/- transferred on 13.05.2024. The period of agreement was fixed for three months starting from 18.05.2024. The 1st petitioner was ready and willing to perform his part of the agreement, and this was informed to respondents 1 and 2. Respondents 1 and 2 had leased out the plaint schedule property to the 6th defendant in the suit in 2005 for operating M.M Fuels for a period of 20 years. The 6th defendant is a citizen of Canada. The 1st respondent led the petitioner to believe that a partnership deed had been executed in between the 1st respondent and the 6th defendant. Furthermore, the 1st respondent informed the 1st petitioner that the petrol pump is currently being operated by one Joseph James under an agreement executed in the name of Joseph James's wife. The 1st respondent also agreed to terminate the lease and put the plaintiff in possession of the property. Since the petrol pump occupies only 27 cents

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of the plaint schedule property, the power of attorney holder of the 6th defendant executed release deed to remove the remaining portion of the plaint schedule property from the lease. The defendants also agreed to cancel the lease deed within the period specified in the sale agreement. At the time of entering into the sale agreement sale, the defendants led the 1st petitioner to believe that the extent of the plaint schedule property was 60 cents. They also agreed to proportionate reduction of the sale consideration in the event of a shortage in extent upon measurement. Furthermore, they agreed that if the extent exceeds 60 cents, the 1st petitioner would not be required to pay any additional amount. As agreed, the lease deed was cancelled on 21.08.2024, as per document No.2557/2024. Things being so, respondent 2 and 3 return to their native, and the 2nd respondent executed a power of attorney as 179/2024, in favour of 2nd defendant in the suit for the execution of the sale deed. In addition to the above, the 2nd respondent executed a consent letter dated 09.09.2024, stating that in event of default in performing the agreement for sale, the remaining property of the 2nd respondent would also be liable to compensate the 1st petitioner. However, respondents 1 and 2 failed to

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perform their part of the sale agreement. Furthermore, the details of the payment and adjustments between the parties to the suit are outlined in the petition. Since the defendants failed to perform the sale agreement, the 1st petitioner is entitled to recover the amount paid as part of the sale consideration to the defendants. Additionally, the 1st petitioner is entitled to a charge over the plaint schedule property for the said amount. The respondents are now attempting to alienate the plaint schedule property to defeat the execution of the decree that may be passed against them. Hence, the petition.

3. Brief averments in the objection filed by the 1st respondent are as follows:- The petition is not maintainable either in law or on facts. The averments in the affidavit in support of the petition are not fully correct. The total consideration for item No.1 property, as mentioned in the petition, is ₹4,50,00,000/-. Therefore, it is not necessary to attach the entire property, as the property involved in the agreement is sufficient to satisfy the claim of the petitioners. Furthermore, the petitioner is claiming expenses and interest. The petitioners' entitlement to the said amount is to be determined only after trial. According to the fair value register of the

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Government of Kerala, ₹1,98,000/- is fixed per Are. Based on this, the item No.3 of the plaint schedule property would fetch an amount of ₹3,26,91,780/-. Additionally, a two-storied residential building is situated on item No.3 property, valued at ₹1,00,00,000/-. Including the value of the house, item No.3 alone would fetch ₹3,00,00,000/-. Item No.4 property would also fetch ₹24,05,568/-. Further, there is no reason to attach the property as claimed by the petitioner. Hence, the respondents prayed to dismiss the petition.

4. Both sides were heard.

5. For the purpose of reference, Exts.A1 and A2 documents were marked from the side of petitioners. No document was marked from the side of the respondents.

6. From the rival contentions, following points raised for consideration:-

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- 1. Have the petitioners made out a prima facie case?*
- 2. Are the petitioners entitled to get an order of attachment before judgment as prayed for?*
- 3. Will the petitioners suffer irreparable loss and hardship if the petition is not allowed?*
- 4. What is the order as to costs?*

7. **Point Nos.1 to 3:-** For the sake of convenience and to avoid repetition, these points are considered together. The case of the petitioners is that, after entering into Ext.A1 sale agreement and receiving an advance amount of ₹1,00,00,000/-, the respondents failed to perform their part of agreement. Therefore, the petitioners filed the suit to recover the amount paid to the respondents as part of sale consideration. The petitioners specifically contend that the respondents are taking hasty steps to alienate the petition schedule properties intending to delay the execution of the decree that may be passed against them. The source of this information has been stated in the affidavit.

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8. The respondents admitted to the execution of sale agreement and receipt of advance amount. However, they stated in their objection that there is no necessity to attach the entire petition schedule properties. Furthermore, the respondents contend that the property covered by Ext.A1 would fetch ₹4,50,00,000/-.

9. I have perused the records. The petitioners have explicitly stated in the affidavit in support of the petition that the respondents are taking hasty steps to alienate the petition schedule property with the intent to delay the execution of any decree that may be passed against them. It is pertinent to note that, the respondents have no case that the petitioners' attempt is to utilize the provisions of Order 38 Rule 5 of CPC as a leverage for coercing the respondents to settle the suit claim.

10. On perusal of the rival contentions, I am satisfied that the respondents with a view to obstruct or delay the execution of a decree that may be passed against them, are attempting to dispose of the petition schedule properties. I am further satisfied that, if the petition is not allowed, the petitioners will be put to irreparable loss and hardship. Though the respondents stated in their objection regarding the fair value of

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the property fixed by the Government, no documents produced in support thereof. However, the schedule of the attachment petition includes five items of properties, including the property covered by Ext.A1 document. The value of the property agreed upon between the parties, as per Ext.A1 document, is ₹4,50,00,000/-. The said property is scheduled in the petition as item No.1. The values of item Nos.2 and 3 in the attachment schedule is shown as ₹25,00,000/- each. Therefore, I am of the view that conditional attachment of item Nos.1 to 3 in the attachment schedule would suffice to meet the requirement. These points are answered accordingly.

11. **Point No.4:-** It has already been found that the petitioners are entitled to an order of attachment. Normally, costs will follow.

In the result, the petition is allowed in part with costs as follows:-

1. Item Nos.1 to 3 in the attachment schedule properties are conditionally attached till the respondents produce sufficient

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security for the plaint claim of ₹5,33,08,443/- together with security for the costs of the attachment.

2. Effect the order of conditional attachment and communicate copy of this order to the Village Office and SRO concerned.

Dictated to the Confidential Assistant, typed by her directly into computer, corrected and pronounced by me in the Open Court, this the 11th day of April 2025.

Sd/-

ATHEEK RAHMAN

CIVIL JUDGE (SENIOR DIVISION)

APPENDIX :-

Petitioners Exhibits :-

A1	20.12.2011	Certified copy of deed No.3101/2011 of SRO Pothanicaad.
A2	09.09.2024	Consent letter executed by C.P Mathew (Mathew C Paulose) in favour of Thomson Scaria.

Defendants' Exhibits :- Nil

Third Party Exhibits:- Nil

Court Exhibits :- Nil

Plaintiff's Witness :- Nil

Defendants' Witness :- Nil

Court Witness :- Nil

Sd/-

Typed by: Ss/-

Compd.by: Lmv/-

CIVIL JUDGE (SENIOR DIVISION)

// True Copy //

(By Order)

Sheristadar

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Copy of Order
in I.A. 3/2025
in O.S. 8/2025
Dated: 11.04.2025