

STATE OF KERALA
IN THE SUBORDINATE JUDGE'S COURT, ERNAKULAM

Present:

Smt.Ancy T., Additional Sub Judge - I

Monday, the 22nd day of September, 2025/31st Bhadra 1947

I.A. No.27/2025 in FDA No.364/2016 in
O.S No.694/2005

**Petitioner/
Auction
Purchaser:**

Praveen Prabhakar, S/o.K.Prabhakaran, residing at Shruthi, formerly resided at Palathumparambil House, Shoba Road, Vennala P.O., Edappally South Village, Kochi - 682028, represented by his general Power of Attorney holder K. Prabhakaran, S/o.Karuppankutti, residing at Shruthi House, Shoba Road, Vennala P.O., Kochi - 682028.

By Advs. C.P.B. Subrahmanian and Mathew Abraham.

**Respondents/
Plaintiffs/
Defendants:**

1. P.K.Vasudevan, S/o.Late Narayanan @ Kandan, Pullomparambil House, Palarivattom, Ernakulam, now residing at Pullomparambil House, Chittoor, Ernakulam. (Died)
2. P.K. Sachivorthaman, @ Kandan, Pullomparambil House, Palarivattom, Ernakulam, now residing at Kaipadamugal, Vadacode P.O., Kangarapady. (Died)
3. T.K. Ammini, W/o.Sachivorthaman, Pullomparambil House, Palarivattom, Ernakulam now residing at Kaipadamugal, Vadacode P.O., Kangarapady.
4. Baiju P.S., S/o.Sachivorthaman, Pullomparambil House, Palarivattom, Ernakulam now residing at Kaipadamugal, Vadacode P.O., Kangarapady.
5. Nija, aged 42 years, D/o.Sachivorthaman, Pullomparambil House, Palarivattom, Ernakulam now residing at Nija Bhavan, Thazhathuvalappil, Panayikkulam P.O.
6. Shiju, S/o.Sachivorthaman, Pullomparambil

House, Palarivattom, Ernakulam now residing at Kaipadamugal, Vadacode. P.O, Kangarapady.

7. Vilasini, W/o.Late P.K. Vasudevan, Pullomparambil House, Palarivattom, Ernakulam now residing at Pullomparambil House, Chittoor, Ernakulam.
8. Krishnakumar. P.V. @ Unni, S/o.P.K. Vasudevan, Pullomparambil House, Palarivattom, Ernakulam now residing at Pullomparambil House, Chittoor, Ernakulam.
9. Deepak P.V., S/o. Late P.K. Vasudevan, Pullomparambil House, Palarivattom, Ernakulam now residing at Pullomparambil House, Chittoor, Ernakulam.
10. Sam P.V., S/o. Late P.K. Vasudevan, Pullomparambil House, Palarivattom, Ernakulam now residing at Pullomparambil House, Chittoor, Ernakulam.
11. P.K. Ambujakshan, S/o.Narayanan, Pullomparambil House, Palarivattom, Ernakulam (died on 12.01.2006).
12. P.K. Savithri, W/o.late Velayudhan, Pullomparambil House, Palarivattom, Ernakulam (Died).
13. P.K. Sarojini, W/o.Late Karunan, Kolavelipadath, Labour Junction, Eroor P.O., Tripunithura (Died)
14. P.S. Mani, S/o.Late Sukumari and Ramakrishnan, Chitira, Palachuvadu P.O., Kakkanadu (Died).
15. P.S. Jayan, S/o.Late Sukumari & Ramakrishnan, Thalamittam Veedu, Thaikoodam, Udaya Road, Vyttila, Cochin -19. (Died)
16. Komalam, W/o.late Chandran, Pullomparambil House, Ashwathy, Thaikkattukara P.O., Aluva.
17. Nishi, D/o late Chandran, Pullomparambil House, Ashwathy, Thaikkattukara. P.O., Aluva.
18. Bhaimi, W/o.late P.K.Ambujakshan, Pullomparambil House, Palarivattom, Ernakulam.
19. Asha, D/o.Late P.K. Ambujakshan, Pullomparambil House, Palarivattom, Ernakulam.
20. Shyamkumar, S/o.late P.K.Ambujakshan, Pullomparambil House, Palarivattom, Ernakulam.

21. Sharat Kumar, S/o.late P.K. Ambujakshan, Pullomparambil House, Palarivattom, Ernakulam.
22. Sarosh Kumar, S/o.late P.K. Ambujakshan, Pullomparambil House, Palarivattom, Ernakulam.
23. Raji, D/o.Late Velayudhan, Pullomparambil House, Palarivattom, Ernakulam - 682025.
24. Mohini, D/o.Late Velayudhan, Pullomparambil House, Palarivattom, Ernakulam - 682025 (died)
25. Kala, D/o.late Velayudhan, Pullomparambil House, Palarivattom, Ernakulam - 682025.
26. Anilkumar A.V. @ Kunjan, S/o.late Velayudhan, Pullomparambil House, Palarivattom, Ernakulam - 682025. (Died)
27. Gomathy, W/o.Late P.S. Mani, Chitira, Palachuvadu P.O., Kakkanad (died).
28. Rajesh, S/o late P.S. Mani, Chitira, Palachuvadu P.O., Kakkanadu.
29. Renjitha, D/o.late P.S. Mani, Chitira, Palachuvadu P.O., Kakkanadu.
30. Babu, S/o.late Smt.P.K. Sarojini, Kolavelipadath, Labour Junction, Eroor North P.O., Tripunithura.
31. Sajini Soman, aged 59 years, D/o.Late Smt.P.K.Sarojini, Kolavelipadath, Labour Junction, Eroor North P.O., Tripunithura, now residing at Pareparambu House, Eroor North.P.O.
32. Pradeepan, S/o late Smt. P.K.Sarojini, Peringottil House, Glass Factory Colony, Kalamassery.
33. Swaminathan, S/o Sarojini, Kolavelipadath, Eroor North P.O., Thripoonithura (Died).
34. Sneha K.S., D/o late Swaminathan, Kolavelipadath House, North Vymethi, Eroor.P.O., Thripunithura - 682306.
35. Megha K.S., D/o late Swaminathan, Kolavelipadath House, North Vymethi, Eroor.P.O., Thripunithura - 682306.
36. Dhanya P.J., D/o.Late Jayan P.S., Blavath House, Villedath Lane, Chambakkara, Maradu P.O., Ernakulam, Pin - 682304.
37. Malini C.G., W/o.Jayakumar K.K, 6/145 A, Karaparambil House, Jawahar Road, Kumbalangi,

Ernakulam, Pin – 682007.

38. Latha Anilkumar, W/o.Anilkumar, Asari Parambil, Pallichambal Road, Palarivattom, Kanayannur, Ernakulam, Pin – 682025.
39. Aneesh A.A., S/o.Anilkumar, Asari Parambil, Pallichambal Road, Palarivattom, Pin – 682025.
40. Parvathy A.A., D/o.Anilkumar, Asari Parambil, Pallichambal Road, Palarivattom, Pin – 682025.
41. Gopi V.K., S/o.Konthikkutty, Chathanad Kunneparambu, Kakkanad, Pin – 682030.
42. Avanthika Manoj, Chathanad House, Priyadarshini Road, Puthuvype P.O., Pin – 682 508 represented by her mother Prasheetha K.P.
43. Abhishek Manoj, Chathanad House, Priyadarshini Road, Puthuvype P.O., Pin – 682 508 represented by her mother Prasheetha K.P.

R1, R2, R7, R11 to R16 – Died

R3 to R6 by Advs. Babu Karukapadath, P.U. Vinodkumar, J. Ramkumar, Amina Fathima and K.M. Faisal.

R8 to R10 by Advs. Babu Karukapadath, J. Ramkumar, Amrin Fathima and K.M. Faisal

R17, R20, R27 to R29 – Exparte.

R18, R19, R21 and R22 by Adv. K.P. Aravindakshan and Vishnu Devaraj.

R23 to R26 – No Vakkalath.

R30 to R35, R37 by Adv. Abraham K. John.

R36, R38 to R43 – No Vakkalath.

This application filed under Order 21 Rule 95 and Section 151 of the C.P.C. praying this court may be pleased to order to deliver the preliminary decree schedule properties including all the improvements, buildings etc thereon to the auction purchaser/petitioner, by deputing the Amin of the court, after removing all obstructions/resistance.

This application coming on for hearing before me on 20.09.2025 and the Court on 22.09.2025 delivered the following:

ORDER

This application is filed by the petitioner/ auction purchaser with a prayer to depute an amin to deliver the preliminary decree

scheduled properties, including all the improvements, building etc. to the auction purchaser /petitioner under Order 21 Rule 95 CPC.

2. The averments in the affidavit in support of the IA, in brief are as follows:-

The petitioner/ auction purchaser is represented by his power of attorney in this petition. The auction of preliminary decree schedule was necessitated on account of non partiability of the properties. The court put the same into auction among the sharers and then into public auction after the due publication of sale and compliance of other legal formalities, the sale by public auction was conducted on 2.4.2024. The auction purchaser bid the properties for an amount of Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs). Hence the Advocate Commissioner declared him as the purchaser of the property subject to the approval of the court. The auction purchaser has deducted the income tax payable out of the total sale consideration and the tax amount has been remitted with the income tax department and pay in slips (challan) are produced before the court. The balance sale consideration is in deposit before the court. In the above circumstances court confirmed the sale in the name of the auction purchaser on 10.4.2025. Thus the sale is made absolute. The auction purchaser filed a petition for the issuance of sale certificate in his name in respect of the preliminary decree schedule properties, which was purchased by him in public auction held by the court on 2.4.2024 and confirmed on 10.4.2025. Therefore the petitioner/

auction purchaser is entitled to get the delivery of the preliminary decree schedule properties including all the improvements, buildings etc. through the process of court. The auction purchaser filed this petition for the delivery of the preliminary decree schedule properties including all the improvements, buildings etc. purchased by him in public auction/sale conducted by the court.

3. Respondent No.21 filed counter affidavit and it is summed up as follows: Respondent No.21 filed his counter statement and he submitted that he is representing on behalf of respondents No.18, 19 and 22 in the said petition. The petition is not maintainable as the name mentioned in the cause title and docket of the petitions are different from each other. The petitioner/auction purchaser claimed that the property purchased by him is the preliminary decree property. It is settled law that preliminary decree is not executable. Hence the sale in respect of the preliminary decree in the above F.D.A. is illegal and hence not sustainable. Therefore the order of confirmation of the sale dated 10.4.2025 is illegal and void as the sale dated 21.4.2024 is void. Hence, petitioner/auction purchaser is not entitled to get delivery of the preliminary decree schedule property. The description of the preliminary decree schedule property as "decree schedule properties including all the improvements, buildings etc. thereon, more specification described under the preliminary decree in the case" is incorrect and untrue as there is no such description in the preliminary decree. The description in the preliminary decree schedule property is

only regarding the land ad-measuring 12.580 cents. Out of 12.580 cents all the improvements in the property having an extent of 8 cents of land were made after 2011 by the respondents. The three buildings existing in 8 cents of land as reported by the Advocate Commissioner in his report dated 18.6.2020 were constructed by respondents by obtaining building permits and plan approved from the Cochin Corporation in the year 2011 and 2013. Respondents have produced the permits in the above FDA. The petitioners in FDA or the other respondents therein have no right over the buildings or in the 8 cents of land. Hence the sale in respect of the 8 cents and the buildings thereon is illegal and hence the auction purchaser has no right to get possession or title in favour of them. Therefore the auction purchaser is not entitled to get delivery of the property as prayed for. The petitioner is not entitled to get delivery of the properties as prayed for. Hence the petition is only liable to be dismissed.

4. The following point was raised for consideration :-

Whether the auction purchaser is entitled to get delivery of the schedule properties?

5. Heard.

6. **Point:-**

In this case, auction of preliminary decree schedule was necessitated on account of non partiability of the properties. The Court put the property in public auction after the due publication of sale and

compliance of other legal formalities sale by public auction was conducted on 02.04.2024. The auction purchaser bid the properties for an amount of Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs). This application is filed to effect delivery of the property by deputing an amin. But it is to be noted that final decree is yet to be passed in this case. Hence I am of the view that this application is premature in nature and cannot be allowed. So this application stands dismissed.

In the result this application is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by her corrected and pronounced by me in the open court, on this the 22nd day of September, 2025).

Sd/-

Ancy T.

Additional Sub Judge - I

Appendix: Nil

Id/-

Additional Sub Judge - I

Typed by : ms
Comp.by : sm

**O R D E R in
I.A. No.27/2025 in
FDA No.364/2016 in
OS No.694/2005
Dated: 22.09.2025**