

IN THE COURT OF SUBORDINATE JUDGE, ERANIEL.
Present : Tmt. D. Asha Kousalya Shanthini, B.Sc., B.L.,
Subordinate Judge, Eraniel.

Friday, the 9th day of January 2026

E.A.No.3/2025
in
E.P.No.25/2025
in
O.S.No.789/2015

Aswini

....Petitioner/Stranger

.Vs.

1. Sreenivasan Menan (Petitioner)
2. Prathaban Thampi @ A.P. Thampi

....Respondent/Petitioner/
D.H/Judgment Debtor

This petition coming up for final hearing on this day and the petitioner called absent though Thiru. T. Balamurali Advocate is on record for petitioner and Thiru. C. Selvakumar, Advocate for the 1st respondent and Thiru. C. Retnaraj, Advocate for the 2nd respondent, this court delivers the following:

ORDER

1. The E.A. no.3/2025 is filed under order 21 rule 58 of the Civil Procedure Code, raising objection that the E.P. petitioner is not entitled to attach and sell the entire E.P. schedule property, till a preliminary decree is passed by the Hon'ble Additional District Court, Padmanabhapuram in O.S. no. 115/2021 and O.S.no.228/2023 for ascertaining her share in the E.P. schedule property.

2. During the enquiry, the written arguments notes was filed by the claim petitioner is adopted by the 2nd respondent/ judgement debtor. The 1st respondent appeared in person during the enquiry and filed a memo seeking for rejection of the present E.A.

Now the point to be answered is whether the present E.A. is to be allowed or not ?

3. The claim petitioner is admittedly the own daughter of the 2nd respondent/judgement debtor against whom the decree is passed for recovery of money in O.S. No. 789/2015 on 31.08.2018 by the 1st Additional Munsif Court, Thiruvanthapuram. Against the said decree and judgment, the 2nd respondent has preferred an appeal before the Additional District Court, Thiruvanthapuram in A.S. No. 184/2018 and the same was dismissed on 21.11.2019 and there is no Second Appeal preferred. The 1st respondent/decreed holder has filed in E.P. No. 25/2025 by stating that he filed an execution petition before the 1st Additional Munsif, Thiruvanthapuram in E.P. No.208/2020 in O.S. No. 789/2015 and it was transmitted to this court as per the order dated 10.02.2022. The transmit decree was received by this Court on 25.07.2025 and the present E.P. was filed by the 1st respondent on 08.08.2025.

4. The claim petitioner/daughter did admit the execution of the settlement deed in respect of the E.P. schedule property by the father / 2nd respondent judgment debtor in her favour on 03.07.2017., keeping her mother as her guardian. The date of the decree in the money suit in O.S. No. 789/2015 was 31.08.2018. So, no doubt, during the pendency of the money suit only, the defendant father has executed the settlement deed in favour of the minor child for reasons best known to him and admittedly within one year and one month (that was on 31.08.2018) the judgment was passed against him. The self-serving settlement deed appears to be a sham document in the given factual matrix, when the timing of the transfer and the intention behind it is considered. The petitioner, daughter who is not a stranger, cannot raise objections under order 21 rule 58 of the CPC. The petitioner's father namely the 2nd respondent / Judgment debtor is alive and is openly sailing along with her in this claim petition too, where the legal heir/daughter is not claiming any independent right of her own. The collusion is obvious for the judgement debtor's own daughter describes her as a stranger here for reasons best known to her which is untenable. It is settled principle of law that under order 21 rule 58 CPC, the court is bound to protect the interest of the objectors who are setting up an independent title,

distinct or different from that of the judgment debtor, which is not the case here. On this score itself the present claim is liable to be rejected.

5. The claim petitioner claims to have attained majority and she mainly relies on O.S. No. 228/2023 and O.S. No. 115/2021 which are filed for partition. The petitioner cannot raise objections for the attachment of the E.P. schedule property by relying upon the subsequent suits which are filed admittedly after the judgment dated 31.08.2018 in O.S. No. 789/2015 and after the judgment passed in the appeal A.S.No. 164/2018 which was dismissed on 21.11.2019. Further, the E.P. was filed during the year 2020 should also to be considered here. It is very pertinent to note here the petitioner who is the legal heir of the judgement debtor/ 2nd respondent cannot raise objections under order 21 rule 58 of the Civil procedure Code, whereas, she has to resort to claim under section 47 of the Civil procedure Code, only, which reads as follows:

Section 47:

Questions to be determined by the Court executing decree :-

(1) All questions arising between the parties to the suit in which the decree was passed, of their representatives and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(2) x x x)

3. Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1 – For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

While deciding the claim, the powers under section 47 of the CPC is microscopic and lies in a very narrow inspection hole, where in such claims the executing court can allow objection under section 47 to the executability of the decree, if it is found that

the same is 'void abinitio' under nullity, apart from the ground that the decree is not capable of execution under law either because, the same was in ignorance of such a provision of law or the law was promulgated making a decree in executable after its passing. The petitioner is trying to act smart to expand the said limited scope by resorting to order 21 rule 58 CPC, who has to fail.

6. Coming to the conduct of the petitioner, she categorically admits that she is not a party in O.S. No. 228/2023. Infact, in the accompanying affidavit, she has not mentioned anything about the partition suits and between whom and how they are contested. The petitioner has just filed the copy of the plaint filed in the said partition suits and she very smartly tries to claim that her father namely the 2nd respondent is entitled only for a small portion of the E.P. schedule property who also submits that in the partition suits she is also entitled for a share. It is also pertinent to note here that, when she has not denied or disputed the execution of the settlement deed by her father for claiming exclusive title over the entire petition schedule property, how she can claim that she is entitled only for a share in it, is a very self contradictory stand, which reflects on their collusion.

7. The petitioner submits that the E.P. schedule property is not partitioned and no attachment can be made in the main E.P. till a preliminary decree is passed in O.S. No. 115/2021 and O.S. No. 228/2023. If her title is based upon the share of his father in the said partition suits, how can she claim exclusive title by virtue of the settlement deed dated 03.07.2017, by calling her a stranger is not explained by her during the enquiry.

8. Here, the 2nd respondent father/judgement debtor has also filed his counter and adopted the written argument notes filed by the petitioner by stating that he is entitled for a portion only in the E.P. schedule property which is a house and house site having an extent of just 3.150 cents with a RCC building bearing door no. 7/2-1 in resurvey no. 75/19 and 20 of Mondaikadu village. So, in reality, the present claim or objection is made by the judgment debtor himself, who is collusively now joining

hands with his daughter, who has to seek his remedy under section 47 CPC only, where its objective is to prevent unwanted litigation and dispose of all objections as expeditiously as possible and also to prevent multiplicity of suits.

9. During the enquiry, the petitioner marked no documents, who only filed her written argument notes. She did not file her title deed namely the settlement deed dated 03.07.2017 with the present claim petition who has to prove her interest in the property and it is not liable for attachment in the E.P., because, the settlement is a genuine transaction based on natural love and affection, which was executed during the pendency of the original suit was not an attempt to evade legal obligations. She failed absolutely on this aspect, who is now trying to rely upon some subsequent legal proceedings taken up by her father/2nd respondent/Judgement debtor himself and his their own family in the two partition suits. In the said factual matrix it appears that the settlement deed dated 03.07.2017 was hurriedly and intentionally executed only for the purpose of defeating the suit claim of the 1st respondent/ decree holder where such a transfer is clearly a fraudulent transfer in terms of section 53 of the Transfer of Property Act 1882. Here the ruling relied on by the petitioner and the 2nd respondent in the order dated 27.08.2020 in C.R.P (NPD) MD No. 563/2020 is found not applicable in the present case, because, in that matter the revision petitioner sought for attachment and sale of the property which belonged to a 3rd party who has purchased it from the respondent's daughter in whose favour a settlement deed was executed by the judgment debtor. But in the present case, as already discussed the petitioner is not a 3rd party but she is the own daughter of the judgement debtor, now clubbing her claim on behalf of her father.

10. The petitioner only filed the copy of the plaint filed in O.S.no.115 of 2021 and O.S.no.228 of 2023 along with the petition. It is very interesting to note that O.S.no.228 of 2023 (O.S. no. 70/2020) was filed by her own father, namely the 2nd respondent/judgement debtor seeking for partition as against his siblings for a larger

extent of 7.350 cents in re survey no. 75/18, 75/19 and 20 including the petition schedule property of 3.150 cents.

In his plaint, he has categorically pleaded that

“Thereafter under the instigation of the 1st defendant, the plaintiff’s parents executed document only having an extent of 3.150 cents in Re.Sy.No.75/19 and 75/20 from the self acquired property of the plaintiff’s parents. As the plaintiff father is sick and aged the plaintiff mother alone executed the said area by herself and act as a curator of her husband as document No.935/2008 dated 11.06.2008 of Manavalakurichy Sub-register Office and handed over the document to the plaintiff on 15.06.2008. After the execution above said document on 26.11.2008 the plaintiff father was died.

7. Not knowing any other way the plaintiff accepted the above said document executed by his mother as stated supra and he regularly paid tax to the Government and obtained patta also in his father. Subsequently, the plaintiff executed a settlement deed infavour his daughter and now the plaintiff daughter obtained patta in her favour and regularly paid tax to the government and she is in possession and enjoyment of the said area as absolute owner without and hindrance.

11. In the counter filed by the 1st respondent/E.P. petitioner/decreed holder, he submits that the petition schedule property was obtained by the 2nd respondent through a settlement deed by his parents on 11.06.2008 by virtue of a registered settlement deed in doc. no. 935/2008 and soon after the settlement deed, the petition schedule property was mutated in the name of 2nd respondent who got a patta also in his name, who has constructed a terraced house covering the entire area in the petition schedule property which shows that the 2nd respondent had a better title and possession over the petition schedule property. As discussed supra, these relevant facts are sufficiently admitted or rather pleaded in the plaint filed by the judgement debtor’s suit in O.S.no. 228 of 2023.

12. The 1st respondent has filed the settlement deed dated 03.07.2017 executed by the 2nd respondent in favour of the petitioner in which he has referred to the previous settlement deed in doc. no. 935/2008 and to show the possession patta no. 6505 was relied on. At this juncture, when the possession of the petition schedule property is concerned, with the said documents the possession of the petitioner daughter for her father is sufficiently elicited, who are trying to delay and drag on the E.P. proceedings in which expeditious disposal is consistently insisted by our Hon'ble Apex Court.

Considering the facts and circumstances of the present case, for the above said reasons, this court is not inclined to allow the present E.A. as prayed for.

In the result, E.A. is dismissed. No costs.

Pronounced by me in open court on this the 9th day of January, 2026.

Sd/-
Subordinate Judge,
Eraniel.