



2026:KER:64246

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

MONDAY, THE 17TH DAY OF AUGUST 2026 / 26TH SRAVANA, 1948

OP(C) NO. 3172 OF 2025

AGAINST THE ORDER DATED 27.08.2025 IN EA 380/2025 IN EP
NO.55 OF 2023 OF ADDITIONAL DISTRICT COURT - IV, THALASSERY.

PETITIONER(S)/PETITIONER/DECREE HOLDER:

ABDUL BASITH KURIKKALAKATH,
AGED 41 YEARS, S/O ZAKKARIYA K. P.,
NOW RESIDING AT PB NO. 31100, SHARJAH, UAE PERMANENT
RESIDENT AT FOUSIYA MANZIL, VIVEKANANDA ROAD,
PUTHIYATHERU P. O., CHIRAKKAL, KANNUR,
REP. PRESENTED BY POWER OF ATTORNEY HOLDER RAHIMAN
R.P., S/O MOIDEENKUTTY, AGED 70 YEARS,
RESIDING AT 'SHA VILLA', NEAR KOLLARATHIKKAL MASJID,
MANGADAVU, P.O CHIRAKKAL, KANNUR, PIN - 670561.

BY ADVS.

SRI. ABDUL RAOOF PALLIPATH
SRI. E. MOHAMMED SHAFI
SRI. PRAJIT RATNAKARAN
SMT. GANGA A. SANKAR
SMT. KRISHNAPRIYA R.
SMT. ANJU DONY

RESPONDENT(S)/JD 1 & RESPONDENTS/RESPONDENTS:

- 1 SHAFI MOHAMMED @ SHAFI MOHAMED KHALID
AGED 48 YEARS, S/O MOHAMMED KHALID,
BUSINESS, RESIDING AT 'DARUL FAZI', NEAR BOAT JETTY,
P.O PAPPINISSERI, KANNUR, PIN - 670561.
- 2 SUBAIDA S. P.
AGED 43 YEARS, W/O SHAFI MUAHMED KHALID,
RESIDING AT ' S.P HOUSE', ONAPARAMBA ROAD.P.O,
CHIRAKKAL, KANNUR, PIN - 670011.



2026:KER:64246

- 3 **BRANCH MANAGER,
KERALA STATE CO-OP BANK (KERALA BANK),
PUTHIYATHERU BRANCH, CHIRRAKKAL,
KANNUR, PIN - 670011.**

- 4 **MUHAMMEDALI PUNNAKKAI
AGED 42 YEARS, S/O ZULEKHA, PUNNAKKAI,
P.O. KATTAMPALLY, KANNUR, PIN - 670011.**

BY ADVS.

**SMT. C. S. RAJANI
SRI. V. R. KESAVA KAIMAL
SRI. M.SASINDRAN
SRI. SOHAIL AHAMMED HARRIS P.P.**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 17.08.2026,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



EASWARAN S., J.

OP(C) No. 3172 of 2025

Dated this the 17th day of August, 2026

JUDGMENT

A decree holder who had obtained a foreign decree passed in his favour 08.04.2021 of Ajman Court, Ministry of Justice, United Arab Emirates, in accordance with the Civil Procedure Law of the said superior Court by which an assignment agreement dated 01.01.2019 between the plaintiff and the 1st defendant herein stands obliging the defendant therein to pay a sum of Rs. 3,40,000/- dirhams (equivalent to Indian currency Rs. 75,75,200/-) filed an execution petition (Ext. P1) before the District Court, Thalassery. The application was necessitated because the 1st defendant in the foreign decree who is the 1st respondent herein appears to have avoided an order of arrest from the jurisdictional Court and had escaped to India through the territory of land. Immediately on knowing about the said fact, the execution petition was filed on 17.01.2023. A month before filing of the execution petition, it appears that the 1st defendant herein gifted his property to the 2nd respondent, his wife, on 08.12.2022. Thereafter, the wife mortgaged the property with the 3rd respondent Bank. Finding that the property was gifted to the wife by the judgment debtor, the petitioner



impleaded the wife on 21.03.2023. It appears that the 2nd respondent had cleared the dues of the 3rd respondent Bank and thereafter, sold the property to 4th respondent. Therefore, according to the petitioner, the entire exercise was to defeat the rights of the decree holder and hence decree holder filed Ext. P5 application seeking attachment of the other personal properties of the wife since according to him, the wife was privy to the fraud committed by her husband. This application was rejected by Ext. P7 order holding that there is nothing in the Code of Civil Procedure, 1908, enabling the decree holder to attach independent properties of the wife of the judgment debtor. Challenging Ext. P7 order, the present original petition is filed.

2. Heard Sri. Abdul Raoof Pallipath, the learned Counsel for the petitioner and Smt. C. S. Rajani, the learned Counsel for the 1st respondent, Sri. V. R. Kesava Kaimal, the learned Counsel for the 2nd respondent and Sri. M. Sasindran, the learned Counsel for the 3rd respondent.

3. The only question to be considered by this Court is whether a decree holder can proceed against independent properties of the wife of a judgment debtor on the ground that the wife was a privy to a fraud committed by the judgment debtor. What is pressed into service is the personal law of the parties. Admittedly, the respondents 1 and 2 are



governed by the Mohamedan Law. It is the case of the petitioner that since a gift has been executed to defeat the rights of the creditor, and that the wife was also privy to such fraudulent act, she becomes liable for the decree debt of her husband. Read as may, this Court could not find any provision either in the personal law of the parties nor under the Code of Civil Procedure, 1908, nor under the Transfer of Property Act, 1882, enabling the petitioner/decreed holder to proceed against independently, the properties of the wife of a judgment debtor. Irrespective of the nature of the personal law governing the parties, once a decree has been passed by the Court, the decree holder cannot travel beyond the scope of the decree and then proceed against the parties based on the personal law. This being the common law principle, this Court has no hesitation to hold that the order impugned does not suffer from any infirmity warranting exercise of jurisdiction under Article 227 of the Constitution of India.

4. But then, the petitioner is not remedy less. Section 53 of the Transfer of Property Act, 1882, entitles the Court to look into the transaction and to determine as to whether the transaction is intended to defeat the rights of the creditor and whether it is fraudulently done.

5. In ***Jose v. V. P. Devassy [2025 KHC 513]***, this Court had held that the executing Court can always exercise its power under Section



53 of the Transfer of Property Act, 1882, and declare a transaction as to be void. In the present case, the facts disclose that the foreign decree was passed on 08.04.2021 and that the gift was executed on 08.12.2022. The question to be determined by the executing court is as to whether this gift on 08.12.2022, just 42 days prior to the filing of the execution petition, was intended to defeat the rights of the creditor. Therefore, the petitioner can always request the Executing Court to undertake the enquiry as contemplated under Section 52 of the Transfer of Property Act, 1882. Therefore, giving liberty to the petitioner to raise this plea before the executing court, this Court sustains Ext. P7 order and dismisses the original petition.

5.1. However, the dismissal of this original petition will not prevent the petitioner from raising the question before the execution court as regards the sustainability of the gift executed on 08.12.2022. If such a request is made, the executing Court is bound to apply the principles under Section 53 of the Transfer of Property Act, 1882, and conduct an enquiry as to whether the execution of the gift was intended to defeat the right of the decree holder. On completion of such exercise, if the Court finds that the property was given as gift which executed on 08.12.2022 vitiated and hit by Section 53 of the Transfer of Property Act, the consequential sale in



favour of the 4th respondent will also fall into pieces because such declaration will erode the title of the 2nd respondent over the property.

Ordered accordingly.

**Sd/-
EASWARAN S.
JUDGE**

Svn



2026:KER:64246

APPENDIX OF OP(C) NO. 3172 OF 2025

PETITIONER EXHIBITS

- | | |
|------------|--|
| EXHIBIT P1 | A TRUE COPY OF AMENDED EXECUTION PETITION DATED 17.1.2023 IN EP 55/2023 OF DIST. COURT, THALASSERY |
| EXHIBIT P2 | A TRUE COPY OF COUNTER STATEMENT DATED 31.7.2023 FILED IN EP 55/2023 BY R1/JD |
| EXHIBIT P3 | A TRUE COPY OF COUNTER STATEMENT DATED 31.8.2024 FILED BY R2 IN EP 55/2023 |
| EXHIBIT P4 | A TRUE COPY OF COUNTER STATEMENT DATED 25.6.2025 FILED BY R4 IN EP 55/2023 |
| EXHIBIT P5 | A TRUE COPY OF AFFIDAVIT AND PETITION IN EA 380/2025 DATED 25.7.2025 FOR ATTACHING R2'S PROPERTY |
| EXHIBIT P6 | A TRUE COPY OF COUNTER STATEMENT FILED BY R2 (WIFE OF R1) DATED 22.8.2025 IN EA 380/2025 |
| EXHIBIT P7 | A TRUE COPY OF ORDER DATED 27.8.2025 IN EA 380/2025 IN EP 55/2023 |