



2026:KER:78313

CRP NO. 394 OF 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

MONDAY, THE 12TH DAY OF OCTOBER 2026 / 20TH ASWINA, 1948

CRP NO. 394 OF 2026

AGAINST THE ORDER DATED 09.09.2026 IN EA 2/2026 IN EP
NO.37 OF 2022 OF MUNSIFF COURT ,PATHANAMTHITTA

REVISION PETITIONERS/PETITIONERS:

- 1 JAMES V. KURIAN
AGED 62 YEARS
S/O. KURIAN VILAYIL HOUSE, MURIPPARA MURI
CHENNEERKKARA VILLAGE, KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689503
- 2 SUSAN JAMES
AGED 57 YEARS
W/O.JAMES V. KURIAN VILAYIL HOUSE, MURIPPARA MURI
CHENNEERKKARA VILLAGE, KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689503
- 3 JINCY
AGED 29 YEARS
D/O. JAMES V. KURIAN, VILAYIL HOUSE, MURIPPARA MURI
CHENNEERKKARA VILLAGE, KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689503

BY ADVS.

SHRI.SHYAM KRISHNAN

SHRI.N.B.SUNILNATH

SRI.GENS GEORGE ELAVINAMANNIL

SHRI.S.K.HARISH



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RESPONDENTS/RESPONDENTS:

- 1 V.K SAM
AGED 44 YEARS
S/O V.K. KURIAN, RESIDING AT VILAYIL HOUSE MURIPPARA
MURI, CHENNEERKKARA VILLAGE, KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT (DIED), PIN - 689503

- 2 SHANI V.K.
AGED 41 YEARS
D/O. V.K. KURIAN VILAYIL HOUSE, MURIPPARA MURI,
CHENNEERKKARA VILLAGE KOZHENCHERRY TALUK,
PATHANAMTHITTA DISTRICT, PIN - 689503

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION
ON 08.11.2026, THE COURT ON 12.10.2026 DELIVERED THE FOLLOWING:



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“ C.R.”

C.S.DIAS,J.

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Dated this the 12th day of October, 2026**ORDER**

The petitioners/judgment debtors had filed E.A. No. 2/2026 in E.P. No. 37/2022 on the file of the Court of the Munsiff, Pathanamthitta. The respondents are the decree holders in the execution petition.

2. The petitioners' case in the revision petition is that the respondents had instituted O.S. No. 232/2017 before the afore-referred court, on its original side, for declaration of title, a mandatory injunction and other consequential reliefs. In their written statement, the petitioners specifically contended that the first respondent, who is now deceased, was of unsound mind and that no



enquiry under Order XXXII Rule 15 of the Code of Civil Procedure (for short, 'Code') was conducted. Therefore, the suit was not maintainable. Nevertheless, the Trial Court decreed the suit without considering the said contention. The petitioners raised the same question before the Appellate Court, this Court and the Hon'ble Supreme Court in A.S. No. 53/2022, R.S.A. No. 167/2026 and S.L.P. No. 23926/2026, respectively, but the question was not considered. After the Special Leave Petition was dismissed, the petitioners filed the application in the execution proceedings, contending that the decree was a nullity due to non-compliance of the mandate under Order XXXII Rule 15 of the Code. The Execution Court rejected the application by the impugned order. The impugned order is contrary to law, facts and evidence on record; hence the civil revision petition.

3. I have heard the learned counsel for the petitioners.



4. The learned counsel for the petitioners submits that the petitioners had specifically contended that the suit was not maintainable because no enquiry was conducted under Order XXXII Rule 15 of the Code to ascertain whether the first respondent was a person of unsound mind. According to the learned counsel, none of the courts on the original side considered the question. It is argued that, by virtue of Section 47 (3) of the Code, the petitioners are entitled to raise the question before the Execution Court, as the alleged omission goes to the root of the matter, and renders the decree a nullity and consequently makes it inexecutable. Nonetheless, the Execution Court has dismissed the application.

5. The petitioners' principal contention is that, since the courts on the original side have failed to consider whether the suit was maintainable in the absence of an enquiry under Order XXXII Rule 15 of the Code regarding the first respondent's mental capacity, the Execution Court



had to examine that question in the application filed under Section 47 (3) of the Code.

6. In **Gangabai Gopaldas Mohata v. Fulchand and Others** [(1997) 10 SCC 387], the Hon'ble Supreme Court, while interpreting Section 47 of the Code, held as follows:

"8. Section 47 of the Code is couched in very wide language. The very object is to avert another suit concerning the decree under execution. Sub-section (1) of Section 47 of the Code says that—

"47. (1) All questions arising between the parties to the suit in which the decree was passed, or 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."

Perhaps sub-section (1) would not have made it clear that a dispute between a party to the suit and another claiming to be his representative could have been resolved in execution proceedings. But that doubt no longer subsists in view of sub-section (3) which reads:

"47. (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."

Even a transferee pendente lite is a representative of his transferor within the meaning of sub-section (3) of Section 47. One who claims to be a transferee by operation of law would as well be a representative and if his claim to be a representative is disputed either by the opposite party or by the party under whom he claims, such dispute must also be resolved by the executing court itself. The word "representative" used in Section 47 is obviously much wider than the words "legal



representative” as used in Section 50 of the Code.

9. If a person approaches the execution court claiming that he is the representative of the decree-holder's interest in the decree and the decree-holder disputes it, the execution court has to resolve the dispute for proceeding with the execution of the decree. The view of the learned Single Judge of the High Court of Bombay that the court has only a limited jurisdiction is therefore not in consonance with the wide language employed in Section 47 of the Code.”

7. The language of Section 47, read in the light of the above decision, makes it clear that an alleged irregularity in conducting an enquiry under Order XXXII Rule 15 does not fall within the purview of Section 47. Sub-section (3) of Section 47 is to enable the Court to decide whether a person is or is not the representative of a party, when the status is in dispute.

8. In the present case, the petitioners do not claim to be representatives of the deceased first respondent. Their contention is only that no enquiry was conducted to ascertain whether the first respondent was a person of unsound mind. It is undisputed that this question was raised on the original side before the Trial Court, Appellate



Court, Second Appeal Court and the Hon'ble Supreme Court, but the same was rejected. The decree has attained finality and the findings operate as res judicata against the petitioners. The petitioners cannot reopen a concluded question by filing an application under Section 47.

9. Even assuming, for the sake of argument, that no such enquiry was conducted, the Division Bench of this Court held in **Roy Thomas v. Lekha Roy** [2019 (2) KHC 130] as follows:

"5. When such a person becomes a defender of a proceeding in a court of law, Order XXXII R.3 of the Code of Civil Procedure (hereinafter referred to as 'the C.P.C.') applies, providing for appointment of a guardian for him. In fact, Order XXXII does not oblige a suitor or petitioning party to apply for an order appointing a next friend for him/her whereas an order appointing guardian is necessary when he or she requires to be represented in the proceeding by a guardian. A next friend is different from a guardian. Next friend in a legal proceeding is a person who undertakes the legal cause and acts for the legal benefit of someone not legally competent to act for himself or herself. He does not stand confined to any particular relative of the suitor. While a guardian is competent under law to act as a next friend for a person, the converse may not always be true. This distinction made by law was not taken notice by the court below".

10. In addition to the principle laid down in the above decision, it is to be remembered that the suit was



decreed in favour of the first respondent, to his benefit, and the decree has attained finality. In the above background, it cannot be said that the next friend acted against the interest of the first respondent, who is none other than the sister of the 1st respondent and his legal heir, who has succeeded the estate of the deceased. The appointment of a next friend, for a person falling within the purview of Order XXXII, is a matter between the court and the person under the legal disability, intended to safeguard that person's best interests, and not for a judgment debtor to dispute, that too at the execution stage. In any event, the Execution Court is not the forum to decide the question after the decree has attained finality.

11. The suit was instituted in 2017. After four tiers of litigation, the petitioners continue to resist execution of the decree on grounds that cannot be reopened at this stage. In **Periyammal (Dead) Through Lrs and others v. V. Rajamani and Another**[(2025) 9 SCC 568], the Hon'ble



Supreme Court has categorically held that an Execution Court shall not entertain, under Section 47 of the Code, objections intended to obstruct execution once the decree has attained finality. In the said decision, the Hon'ble Supreme Court has also referred to its own decision in **Rahul S.Shah v. Jinendra Kumar Gandhi and others** [(2021) 6 SCC 418], wherein it is held that the court exercising jurisdiction under Section 47 or under Order 21 of the Code shall refrain from entertaining any application that has already been considered by the court while adjudicating the suit or any issue which otherwise could have been raised and determined during the adjudication of the suit if due diligence was exercised by the applicant.

After carefully analysing the facts, the materials on record, the principles laid down in the afore-cited precedents, and the reasons mentioned above, I do not find any illegality, impropriety, or irregularity in the impugned order warranting interference by this Court under Section



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115 of the Code. The Civil Revision Petition is devoid of merit and is accordingly dismissed. The Registry shall forward a copy of this order to the Execution Court.

Sd/-**C.S.DIAS, JUDGE**

rmm/8/10/2026