IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MOHAMMED NIAS C.P.

WEDNESDAY, THE 3RD DAY OF JUNE 2026 / 13TH JYAISHTA, 1948

RFA NO. 393 OF 2003

AGAINST THE JUDGMENT AND DECREE DATED 10.06.2003 IN OS NO.611 OF 1998 OF I ADDITIONAL SUB COURT,ERNAKULAM

APPELLANT/PLAINTIFF:

K.GEETHA
AGED 43 YEARS
D/O. K.G.KRISHNAN, RESIDING AT GANGALAYAM, POONITHURA VILLAGE, ERNAKULAM.

BY ADVS.
SRI.P.VISWANATHAN (SR.)
SRI.K.MANOJ CHANDRAN
SHRI.P.R.AJITH KUMAR
SMT.AMMU CHARLES
SRI.S.A.MANSOOR (PATTANAM)

RESPONDENTS/DEFENDANTS:

1 S.VARADHARAJAN
AGED 55 YEARS, S/O.SUBRAMANIUM POTTI, RESIDING AT DOOR NO.40/1422, AZAD ROAD, ERNAKULAM VILLAGE, ERNAKULAM. (NOW RESIDING AT SREERAM, A.P.R.LINE, 12/2, AMBELIPADAM ROAD, VYTTILA, JANATHA, COCHIN-682019).

2 SADHIQUE SETH M.K.,
AGED 52 YEARS, S/O. H.H.MUHAMMED, RESIDING AT 14/82, REMYA, 1ST FLOOR, CHULLIKKAL, COCHIN-5.

3 THE MANAGER,
STATE BANK OF TRAVANCORE, M.G.ROAD BRANCH, ERNAKULAM.

BY ADVS.

SRI.R.LAKSHMI NARAYAN (SR.)
SHRI.K.K.JOHN FOR R3
SMT.R.RANJANIE

THIS REGULAR FIRST APPEAL HAVING COME UP FOR ADMISSION ON 03.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MOHAMMED NIAS C.P., J.

...

R.F.A. No.393 of 2003

...

Dated this the 3rd day of June, 2026

JUDGMENT

The defeated plaintiff in O.S.611/1998 on the files of the First Additional Sub Judge, Ernakulam, is the appellant.

2. Plaintiff/Appellant had purchased the plaint schedule property having an extent of approximately 11 cents comprised in Survey No. 212(9) A and (9) B of Edappally South Village belonging to the first respondent by virtue of sale deed No.3769/81 dated 18.06.1981, for a consideration of Rs. 1,11,000/-. He had also spent an amount of Rs.15,000/- towards stamp duty and an amount of Rs. 2,200/- and Rs. 3,500/- for registration. He purchased the property after verifying the original title deed and the encumbrance certificates dated 21.03.1994 and 17.10.1994 that did not reveal any encumbrance for the period from 01.01.1981 to 06.10.1994. The original title deed in favour of the first respondent was also handed over to the plaintiff. The husband of the plaintiff/appellant had also availed a loan by offering the plaint schedule as collateral security by depositing the original title deed with the bank.

3. While so, on 11.10.1998, when the appellant's husband visited the plaint schedule property, he found a new gate installed on the compound wall of the plaint schedule and on enquiry, he understood that the property was purchased by the second respondent in an auction sale held on 29.11.1996, pursuant to the decree in O.S.898/1991 of the Sub Court, Ernakulam. On further enquiry, it was revealed that the plaint schedule properties were attached before judgment dated 31.03.1992 as per order in IA No. 1184/1992 and O.S.898/1991, filed by the third respondent bank against the first respondent and another. In fact, the loan was secured by an equitable mortgage of 4.236 cents of property in Survey No. 674 of Elamkulam Village owned by K.J. Thomas, who was the second defendant in that suit. Since the loan was defaulted, the third respondent bank filed a suit on 18.12.1991.

4. The plaintiff contends that the encumbrance certificate obtained by him did not disclose the order of attachment before judgment and that he is a bona fide purchaser for valuable consideration and without notice. The third respondent had obtained an ex parte decree in O.S.898/1991 and brought the plaint schedule property to sale without proceeding against the decree schedule property. The plaint schedule properties were never offered as collateral security. The second respondent purchased the properties in the auction held on 29.11.1996 for an amount of

Rs.5,55,000/-. The excess amount of Rs.2,89,233/- was deposited in the execution court. The plaintiff alleged fraud and collusion between the defendants in bringing the plaint schedule property to auction sale. Accordingly, the suit was filed for a declaration that the sale certificate dated 10.04.1997 in O.S.898/1991 of the Sub Court, Ernakulam, in respect of the plaint schedule property in favour of the second respondent is null and void and also to cancel the same. The plaintiff further claimed an amount of Rs. 10,66,875/- with 12% interest per annum towards damages.

5. The first respondent was set ex parte. The second defendant contended that the suit was not maintainable and was barred by limitation. It was contended that the sale deed relied on by the appellant was the result of a collusion between the appellant and the first respondent by ignoring the earlier order of attachment in O.S.898/1991. The order of attachment was made absolute on 30.01.1993 and was intimated to SRO Edappally on the same day. It is contented that the first respondent was aware of the entire proceedings in O.S.898/1991, and he had executed the sale deed in favour of the appellant in violation of the order of injunction restraining him from alienating the plaint schedule property. Therefore, it is contended that the sale deed executed in favour of the appellant is void ab initio and not binding on the respondent. It is also argued that the Sub Registrar, Edappally, was bound by the order of

attachment of the civil court and that the plaintiff is never a bona fide purchaser for value or consideration.

6. It is also contended that, in Execution Petition No.980/1993 in O.S. No.898/1991 filed by the third respondent bank, though the first respondent entered appearance, K.J. Thomas, the co-judgment debtor in the said proceedings, alone filed objections. It is also stated that in the execution proceedings, notice was issued to all the judgment debtors. The E.P. was posted for delivery on 11.11.1997, on which day the delivery was ordered, and the E.P. was closed. The alleged sale consideration shown in the document in favour of the plaintiff itself reveals that the sale was a collusion between the defendants.

7. The third respondent bank had filed a written statement contending that the suit is not maintainable, and that the private alienation effected after the order of attachment is void. Even at the time of sale, the property would fetch Rs. 8,83,500/-, but it was sold for a meagre value of Rs. 1,10,000/-. It was also contented that the Court auction was conducted after complying with all the formalities in Order 21 CPC. Accordingly, the bank prayed for dismissal of the suit.

8. The trial court considered the testimony of PWs 1 to 4, and Exts.A1 to A17 were marked on the side of the plaintiff, DWs 1 and 2 were examined, and Exts.B1 to B14 were marked on the side of the defendants.

The trial court found that a sale certificate was issued in the name of the second defendant pursuant to Ext.A12 decree and going by Section 47 of the CPC, all questions arising between parties to the suit in which a decree has been passed or their representatives relating to execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not by a separate suit. It also relied on Order XXI Rules 89 and 90 CPC, and found that since the plaintiff has purchased the property already attached in O.S.898/1991 and that he is a representative of the first defendant, the judgment debtor in Ext.A12 decree, and therefore, the matter in controversy is a question relating to the satisfaction of Ext.A12 decree and that the same can be determined only by the execution court. Thus, it was found that the suit was barred under Section 47 of the CPC.

9. After holding so, it was further found that the sale was conducted in accordance with the procedural formalities and that notices were issued to all the parties to Ext.A12 decree in execution, but the first respondent had not filed any objection to the same. Since the properties were already under attachment and since the first respondent failed to discharge the debt, or even to file objections to the execution, the plaintiff was estopped from disputing the same, much less by separate suit. It is also found that the plaintiff never obtained possession of the plaint schedule property and that Ext.A1 was executed with a view to defeat the right of the

defendant bank. Reliance was also placed on Section 64 of the CPC, which provided that any alienation of the attached property was not binding on the decree holder and that the vendee did not acquire any right in the property so as to defeat the enforceability of the decree holder under attachment. It was found that the appellant cannot be treated as a bona fide purchaser for value. However, it was found that the plaintiff was entitled to realise an amount of Rs. 1,31,700/- with 9% interest per annum from the date of Ext.A1 till realisation and costs from the first respondent and his assets from the attachment schedule amount. Suit against respondents 2 and 3 was dismissed with costs.

10. The learned Senior Counsel for the appellant, Sri.P. Viswanathan, argues, relying on Section 47 CPC, Section 64 CPC, Order 21 Rules 89, 90 and provisions of the Civil Rules of Practice, that the findings of the trial court are clearly illegal. It is argued that the plaint schedule property was never the subject matter of the earlier suit or scheduled to Ext.A12 decree. In fact, the property that was scheduled in Ext.A12 was a different one, which was not proceeded against. It is argued that, under such circumstances, the bar under Section 47 will not apply. It is also argued that since he received no notice in the execution proceedings, he never got a chance to pay off the decree debt, though he had stepped into the shoes of the judgment debtor. It is also argued that there was a duty cast

under the Civil Rules of Practice for the decree holder to file an affidavit showing the encumbrances created and the details regarding the property to be sold, which, if done, would have given a chance to the plaintiff to pay off the decree or raise his objections. It is only when the plaintiff came to know about the sale that he filed the suit. It is submitted that in such circumstances, the right of the appellant was never adjudicated, and he cannot be treated as a legal representative of the first respondent. Learned Senior Counsel also placed reliance on the judgments of the Hon'ble Supreme Court in **Ameena Bi v. Kuppuswami Naidu and others** [1993 KHC 899] and **Danesh Singh v. Har Pyari** [2025 KHC 8016] in support of his submissions.

11. The learned Senior Counsel appearing for the auction purchaser, Sri. R. Lakshmi Narayan argued that the facts clearly showed that the first respondent and the appellant were close friends. It is fully knowing the liability and that the property was attached, that the respondent sold the property to the appellant. He also argued that, going by the provisions of Section 64 CPC, a private transfer of the attached property is void against the claims enforceable under the attachment. He also argued that once a sale is a valid sale, rights secured with the auction purchaser cannot be extinguished except in exceptional cases. He relied on the judgment of the Hon'ble Supreme Court in **Kolanjiammal v. Revenue Divisional Officer**

Perambalur District [2025 KHC OnLine 7613] and of this Court in **Bindhu v. Salomi** [2025 KHC OnLine 2252].

12. Learned counsel appearing for the bank also argued on the same lines and prayed for dismissal of the appeal.

13. Heard the learned Senior Counsel appearing on both sides and perused the records.

14. A few admitted facts relevant to the consideration of this case are as follows:

O.S. 898/1991 was filed before the Sub Court, Ernakulam, by the third respondent bank (third defendant in the present suit) against the first respondent (first defendant in the present suit) and one K.J. Thomas, who was the second defendant and co-judgment debtor in O.S. No.898/1991, for realisation of money on the strength of a cash credit loan facility availed by the first respondent. K.J. Thomas had created an equitable mortgage of 4.263 cents of property, comprised in Survey No. 674/9 of Elamkulam Village, owned by him, for that purpose. The bank had also filed I.A.1184/92 on 19.02.1992 under Order 38 Rule 5 and for attachment before judgment of the plaint schedule properties owned by the first respondent. The interim attachment was ordered on 28.02.1992, and the same was made absolute on 30.01.1993. Both the first respondent and K. J. Thomas were set ex parte on 26.08.1992. When the case was taken up for trial on 02.01.1993, the first respondent filed IA No. 6837/1992 to set aside the ex-parte order, which was allowed, and the case was posted for settlement to 13.01.1993, 25.01.1993 and 29.01.1993, on which day both defendants in O.S. No.898/1991 were again set ex parte for non-filing of written statement, and an ex parte decree was passed on the next day.

15. Nine months thereafter, the third defendant bank filed EP 980/1993 on 22.09.1993 for realisation of the decreed debt against the first defendant and K.J. Thomas (2nd defendant in OS 898/1991). Order 21 Rule 66 CPC notices were issued to them, and after several postings in the execution petition, the case was posted for the proclamation of sale of the plaint schedule. Records revealed that only K.J. Thomas (the 2nd defendant in OS 898/1991) had filed objections. The first defendant/respondent had not filed any objections. Accordingly, the proclamation was settled and posted for sale on 29.11.1996. The sale was conducted on 03.12.1996 and confirmed on 11.02.1997, on which day the EP was closed. There is nothing on record to show that the said sale proceedings were in any way bad. The plaintiff/appellant claimed rights from the judgment debtor in the above proceedings. Given the above, the question arises whether the plaintiff/appellant could maintain a separate suit without any recourse to Section 47 or filing an appropriate application on the execution side.

16. In a recent judgment of the Apex Court reported in **Danesh Singh v. Har Pyari** (supra), the Hon'ble Court had summarised the position of law as regards the doctrine of lis pendens along with Rules 58, 89 to 92, 99 to 104 of Order 21 and Section 47 and concluded as follows:-

> *"256. A conspectus of the aforesaid detailed discussion on the position of law as regards the doctrine of lis pendens, along with Rules 58, 89 to 92, 99 to 104 of Order XXI CPC, respectively and Section 47 CPC is as follows:*
>
> *(i.) Section 52 of the 1882 Act, embodying the doctrine of lis pendens, would apply to suits where any right to the property in question is directly and specifically in issue. Whether any right in the property was directly and specifically in question in the suit would depend on the facts and circumstances of each case. The doctrine cannot blindly be made inapplicable to suits in which the plaint contains a specific averment that the mortgaged property be attached and sold in lieu of the decree or a charge be created on the property. If interpreted so, any judgment-debtor can render the decree incapable of execution by transferring his interest in the property during the pendency of such a suit.*
>
> *(ii.) Rule 89 of Order XXI CPC provides an opportunity to any person claiming an interest in the property sold or a person acting for or on behalf of the persons having such interest, another opportunity to save the property from the clutches of the sale. A sine qua non for setting aside the sale under this rule would be the payment of the deposit as prescribed therein within a period of sixty days from the date of the sale. For the purposes of this rule, a pendente lite transferee of the judgment- debtor would also fall under the ambit of the phrase "person claiming an interest in the property sold".*

(iii.) Rule 90 of Order XXI CPC provides that the sale shall be set-aside if there exists any material irregularity or fraud in publishing or conducting the sale. Furthermore, such material irregularity or fraud must cause a substantial injury to the applicant under Rule 90. In other words, there must be a direct nexus between the material irregularity or fraud and the substantial injury caused to the applicant.

(iv.) The words "material irregularity in publishing or conducting it" in Rule 90 would include any material irregularity or fraud occurring at a stage prior to the proclamation of sale as well, provided that the applicant did not have an opportunity to raise or could not have raised such a grievance at the appropriate time. Furthermore, the mere absence of or any defect in the attachment, by itself, cannot be a ground for setting aside the sale under Rule 90, unless substantial injury is proved. The applicant must make specific averments as regards the alleged irregularities or fraud, and convince the executing court that a substantial injury has been caused to him as a consequence.

(v.) The absence of a saleable interest on the part of the judgment-debtor to the suit property cannot be brought in as a ground under Rule 90 of Order XXI CPC. Such a ground would squarely fall within the ambit of Rule 58 of Order XXI CPC, if the sale is yet to be confirmed.

(vi.) Rule 92(3) of Order XXI CPC states that no person against whom an order under Rule 92 is made (either confirming the sale under Rule 92(1) or setting it aside under Rule 92(2)) can institute a separate suit in that regard. However, there is a very narrow scope for a person to file a separate suit despite the bar under Rule 92(3). The reason for such a separate suit must be that the execution proceedings and the sale were without jurisdiction and, therefore, a nullity and not binding on the plaintiff who has instituted a separate suit.

(vii.) Having said so, before holding such a separate suit instituted by a plaintiff alleging that the entire execution proceedings were without jurisdiction and therefore, the sale was a nullity, maintainable, courts must be vigilant in ensuring that the plaintiff was not a party to the original decree or a representative of a party to the original decree, as stated in Section 47 CPC. If so, instead of filing a separate suit, such persons must prefer an application under Section 47 CPC. Upon any failure to do so, their separate suit would be hit by the bar contained in Section 47 CPC, which specifically uses the words "and not by a separate suit".

(viii.) The term "third party" under Rule 92(4) would mean a party other than the judgment-debtor, decree-holder or the auction-purchaser and would refer to a party who has not had his right, title or interest vis-à-vis the property in question adjudicated under Rule 58, Rule 97 or Rule 99 of Order XXI CPC respectively. To put it very simply, the term "third party" under Rule 92(4) would refer to a party who is extraneous to the original suit proceedings and the proceedings under Order XXI CPC, and who either has not had his right, title or interest adjudicated or having the opportunity to have his right, title or interest adjudicated, has not availed such a remedy within the required time. Such a "third party" would also be someone who falls outside the scope of Section 47 CPC.

(ix.) Rule 92(4) is not a provision which confers any right to the third party to institute a suit for challenging the title of the judgment-debtor to the property which is subject to the execution proceedings. It is merely a procedural provision which states that such a suit must be instituted against the auction-purchaser, where the decree-holder and judgment- debtor would be necessary parties.

(x.) When a party other than the judgment-debtor, including a third party, is dispossessed during the course of execution of a decree, the only remedy for such a dispossessed party would lie in filing an application under Rule 99 complaining of its dispossession. In such an application, all questions including that of the right, title and interest of the parties in the proceeding, to the property, would be examined by the executing court.

(xi.) The words "may" used in Rule 99 along with the words "and not by a separate suit" used in Rule 101, must not be read to mean that a party who has been dispossessed has two options i.e., to either prefer an application under Rule 99 or to file a separate suit, the moment they are dispossessed. This would defeat the underlying object of the amendment made to the scheme of Rules 99 to 104 respectively wherein the executing court has been specifically empowered to look into the questions relating to the right, title and interest of the parties,quite akin to that which would have been done by way of a separate suit. Once the period of limitation for preferring an application under Rule 99 lapses, the person who has been dispossessed in the course of the execution of the decree, including a third party, cannot file a separate suit to circumvent or by-pass the said prescribed period of limitation.

(xii.) Rule 102 prevents the executing court from passing any order under Rule 100 if it is found that the applicant under Rule 99 is a transferee pendente lite of the judgment-debtor. This again, cannot be construed as giving leeway to such a person to institute a separate suit. We say so for the simple reason that, even in the separate suit, the law would not look favorably upon a pendente lite transferee, and no relief of declaration of title and/or possession would be granted to him. His fate would be the same as under an application under Rule 99.

(xiii.) Therefore, - First, the separate suit instituted by the respondent nos. 1 and 2 respectively would be non-maintainable because they are representatives of the judgment-debtor and the bar envisaged under Section 47 CPC would squarely apply to their case. Secondly, having not availed the remedy under Rule 99 of Order XXI CPC within time, the separate suit instituted for the same relief(s) would be barred. Thirdly, even if the aforesaid two reasons assigned by us could be said to not affect the suit instituted by the respondent nos. 1 and 2 respectively, they would still not be entitled to the reliefs claimed owing to them being pendente lite transferees of the judgment-debtor whose transaction would be hit by the doctrine of lis pendens."

17. The principal contention of the plaintiff/appellant is that he was neither a party to O.S. No.898/1991 nor to the execution proceedings and, therefore, cannot be treated as a "representative" of the judgment debtor so as to attract the bar under Section 47 CPC, but must be treated as a "third party". The said contention cannot be accepted for multiple reasons. Section 47 of the CPC lays down that 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. Subsequent purchasers after the decree are representatives of the judgment debtor, and such purchasers step into the shoes of the judgment debtor and cannot be treated as strangers to the decree proceedings. The Supreme

Court in ***Danesh Singh*** *(supra)* reiterated that before entertaining a separate suit challenging an execution sale, the Court must first determine whether the plaintiff is a representative of a party to the decree, since such representatives are bound to pursue the remedies available under Section 47 CPC and Order XXI CPC.

18. In the present case, the attachment before judgment in O.S. No.898/1991 was ordered on 28.02.1992 and was made absolute on 30.01.1993. The decree was thereafter passed against the first defendant/respondent. The plaintiff/appellant purchased the plaint schedule property only on 13.06.1994, after the attachment had become absolute and after the decree had been passed. His title is traced exclusively through the first defendant/respondent, who was the judgment debtor in the earlier proceedings. He does not set up any independent title existing prior to the attachment or independent of the judgment debtor. Being a transferee claiming under the judgment debtor during the pendency of the proceedings, he is a pendente lite transferee and a representative of the judgment debtor within the meaning of Section 47 CPC. Consequently, he occupies no higher position than the judgment debtor himself. Resultantly, the plaintiff/appellant derives no independent title dehors the judgment debtor and his entire claim is founded upon Ext.A1 sale deed executed by the first defendant/respondent.

19. Once the plaintiff/appellant is treated as a representative of the judgment debtor, all questions relating to the attachment, execution, sale, confirmation of sale and issuance of the sale certificate become questions relating to the execution, discharge or satisfaction of the decree and are required to be determined by the executing court under Section 47 CPC and the provisions of Order XXI CPC. As explained in ***Danesh Singh*** (supra), a "third party" for the purpose of resisting the statutory bar is one whose rights are wholly independent of, and not derived from, the judgment debtor, decree holder or auction purchaser. The plaintiff/appellant, claiming exclusively through the judgment debtor, does not answer that description. Consequently, the challenge against the court auction sale and the sale certificate by way of a separate suit is clearly barred by Section 47 CPC.

20. The records further reveal that the attachment before judgment was made absolute and that the execution proceedings culminated in a court auction conducted after issuance of the requisite notices under Order XXI Rule 66 CPC. The first defendant/respondent participated in the proceedings after having the ex parte order set aside, but ultimately chose not to contest the suit by filing a written statement. Even in the execution proceedings, no objection was raised by him to the sale of the property. The

proclamation was settled, the sale was conducted, the sale was confirmed, and a sale certificate was issued in favour of the second defendant/respondent. The plaintiff/appellant, having stepped into the shoes of the judgment debtor, cannot claim a better or higher right than that available to the judgment debtor himself. The plaintiff has not established any jurisdictional defect affecting the competence of the executing court to conduct the sale.

21. As noticed in ***Danesh Singh*** *(supra)*, the legislative scheme underlying Section 47 CPC and Order XXI CPC is that all questions relating to execution must ordinarily be decided by the executing court itself. The Supreme Court has further held that a separate suit can survive the statutory bar only where the execution proceedings are shown to be wholly without jurisdiction and therefore a nullity. No such circumstance exists in the present case. The challenge raised by the plaintiff is essentially directed against the propriety of the execution proceedings and the sale of the attached property. Such grievances fall squarely within the remedies contemplated under Order XXI Rules 89 and 90 CPC and are matters for consideration by the executing court.

22. Even assuming that the plaintiff/appellant was aggrieved by the sale, the Code provided adequate remedies. A person claiming an interest in the

property sold, including a transferee from the judgment debtor, could invoke Order XXI Rule 89 CPC by making the requisite deposit and seeking to set aside the sale. Likewise, allegations of fraud or material irregularity in publishing or conducting the sale could have been urged under Order XXI Rule 90 CPC. The plaintiff/ appellant admittedly did not pursue any of these statutory remedies.

23. The plaintiff/appellant has contended that he had no notice of the execution proceedings and that he came to know of the auction sale only subsequently. Even if such contention is assumed to be correct, the Code itself provides specific remedies to a person who is dispossessed in execution. When a person other than the judgment debtor is dispossessed in the course of execution, the proper remedy is under Order XXI Rule 99 CPC and not by way of a separate suit. The object of Rules 97 to 104 of Order XXI is to ensure that all questions relating to right, title and interest in the property are adjudicated in execution itself, thereby avoiding multiplicity of proceedings. The plaintiff/appellant, however, chose to bypass that statutory mechanism and instituted the present suit.

24. There is yet another reason why the plaintiff/appellant cannot succeed. The transfer in his favour was admittedly effected after the attachment before judgment had been ordered and made absolute. The trial

court was therefore fully justified in relying upon Section 64 CPC. A transferee of attached property acquires no right capable of defeating the claims enforceable under the attachment. Consequently, irrespective of whether the plaintiff had actual notice of the attachment or not, the transfer could not operate to prejudice the rights of the decree holder or the auction purchaser deriving title through court sale.

25. The allegation of fraud and collusion levelled against defendants 2 and 3 is also wholly unsupported by any convincing evidence. The execution records disclose that the decree was put into execution, notices were issued, objections were invited, the proclamation was settled, and the sale was ultimately confirmed. The plaintiff/appellant has not established any material irregularity or fraud causing substantial injury as contemplated under Order XXI Rule 90 CPC. Mere assertions of fraud, unsupported by legally acceptable evidence, are insufficient to invalidate a court auction that has attained finality.

26. The findings entered by the trial court that the plaintiff/appellant is not a bona fide purchaser for value, that Ext.A1 transfer was ineffective against the attachment and that the suit itself is barred by Section 47 CPC are fully supported by the evidence on record and the governing principles

of law. On a re-appreciation of the entire materials, this Court finds no illegality or jurisdictional error warranting interference in the appeal.

27. In the result, the appeal fails and is dismissed. The judgment and decree passed by the First Additional Sub Court, Ernakulam, in O.S. No.611 of 1998 will stand confirmed. The dismissal of the suit against defendants 2 and 3 is upheld. All pending interlocutory applications are closed.

28. Before parting with the case, this Court considers it necessary to reiterate that strict and scrupulous compliance with Rule 330 is mandatory. The requirement under the Rule that the decree holder shall file an affidavit disclosing all encumbrances affecting the property, together with an Encumbrance Certificate covering the prescribed period preceding the attachment, is intended to place before the executing court all relevant transactions, claims, and encumbrances affecting the property. Such disclosure enables the court to ascertain whether any person other than the judgment debtor has any claims or right, title, interest, or encumbrance over the property and to pass appropriate orders in accordance with law, including the issuance of notice to such persons wherever necessary. The rule also casts a corresponding duty upon the executing court to ensure that all relevant particulars affecting the property are duly reflected in the sale proclamation. A complete and accurate description of the property is

indispensable to safeguard the interests of the judgment debtor, inspire confidence among prospective bidders, and secure a fair and competitive price in the sale.

29. All executing courts shall, therefore, ensure strict compliance with Rule 330 before settling the sale proclamation and proceeding with the sale of the properties in execution. Such compliance will not only effectuate the directions as regards the timeline directed in **Periyammal (Dead) through Lrs. & Ors. v. Rajamani & Anr. [Civil appeal Nos. 3640-3642 of 2025]** but also advance the cause of fairness and transparency in execution proceedings apart from minimising avoidable disputes, preventing multiplicity of proceedings, and conserving valuable judicial time.

The Registry is directed to circulate a copy of this judgment or the above directions to all courts and tribunals exercising execution jurisdiction, for information and strict compliance.

Sd/-
MOHAMMED NIAS C.P.
JUDGE

okb/