



EX.S.A. No.6 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

TUESDAY, THE 24TH DAY OF FEBRUARY 2026 / 5TH PHALGUNA, 1947

EX.SA NO. 6 OF 2024

AGAINST THE JUDGMENT DATED 06.02.2024 IN AS NO.63 OF 2023 OF THE DISTRICT COURT, THIRUVANANTHAPURAM ARISING OUT OF THE ORDER DATED 21.06.2023 IN E.A. NO.268 OF 2018 IN E.P. NO.67 OF 2017 IN O.S. NO.576 OF 2013 OF FIRST ADDITIONAL SUB COURT-I, THIRUVANANTHAPURAM

APPELLANT(S)/APPELLANT/CLAIM PETITIONER:

KESAVAN
AGED 53 YEARS
S/O. KALYANA SUNDARAM, TC NO. 39/1806(6),
UTHRADOM VEEDU, KURIYATHI,
MANACAUD P.O, MANACAUD VILLAGE,
THIRUVANANTHAPURAM, PIN - 695009
BY ADVS.
SRI.D.KISHORE
SMT.MEERA GOPINATH
SRI.R.MURALEEKRISHNAN (MALAKKARA)

RESPONDENT(S)/RESPONDENTS/COUNTER PETITIONERS
(DECREE HOLDER & JUDGMENT DEBTOR):

- 1 D. CHANDRAN
AGED 63 YEARS
S/O. DAMODHARAN, VISHNU VIHAR,
TC 55/1012, NEERAMAN KARA, KAIMANAM,
THIRUVANANTHAPURAM, PIN - 695040
- 2 SUNITHA A.S, AGED 42 YEARS
D/O. AMBIKA, TC 53/819, 'SUNITHALAYAM',
MELAMCODE, PONNUMANGALAM, NEAR NSS KARAYOGAM,
NEMOM P.O., THIRUVANANTHAPURAM, PIN - 695020
R1 BY ADV SHRI.SHAJAHAN M.V.

THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION ON 24.02.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



“C.R”

EASWARAN S., J.**Ex.S.A. No.6 of 2024****Dated this the 24th day of February, 2026****JUDGMENT**

The claim petitioner in an application under Order XXI Rule 58 of the Code of Civil Procedure, 1908, has come up in the present appeal, aggrieved by the refusal on the part of the Additional Sub Court-I, Thiruvananthapuram, to entertain the claim petition, E.A. No.268 of 2018 in E.P. No.67 of 2017 in O.S No.576 of 2013, which was affirmed by the District Court, Thiruvananthapuram, in A.S. No.63 of 2023.

2. O.S. No.576 of 2013 is a suit for recovery of money. The 1st respondent in the claim petition is the decree holder, and the 2nd respondent is the judgment debtor in E.P. No.67 of 2017 in O.S. No.576 of 2013. The schedule property belonged to the 2nd respondent. On 18.5.2013, the claim petitioner entered into an agreement of sale with the 2nd respondent, for the sale of the aforesaid property and consequently paid an amount of Rs.51,88,000/- (Rupees Fifty One Lakh Eighty Eight thousand only) towards sale consideration. Since the 2nd respondent did not perform her obligations under the sale agreement, the petitioner filed



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O.S. No.695 of 2013 before the Additional Sub Court-I, Thiruvananthapuram, for specific performance. The suit was filed on 22.11.2013 and was decreed on 31.3.2015. Thereafter, the petitioner filed E.P. No.51 of 2017 in O.S. No.695 of 2013 for getting the sale deed executed after depositing the balance sale consideration on 14.2.2017. On 22.2.2018, the claim petitioner came to know that the 1st respondent had filed a suit against the 2nd respondent as O.S. No.576 of 2013 before the Additional Sub Court-I, Thiruvananthapuram, for the realisation of a sum of Rs.15,00,000/-, in which an *ex parte* decree was passed, and an Execution Petition was filed. The first respondent had filed I.A. No.2075 of 2013 for an order of attachment before judgment with respect to the scheduled property, and a conditional order of attachment was passed on 20.5.2013. The said attachment was confirmed on 20.6.2013. The suit was decreed on 19.2.2016. The 1st respondent has also filed E.P. No.67 of 2017 in O.S. No.576 of 2013, and the same is pending. It is contended that since the order of attachment before judgment was passed, when an earlier agreement of sale in favour of the claim petitioner was subsisting, no right is accrued to the attaching creditor. Thus, it is pointed out that the order of attachment before the judgment cannot prevail over the agreement of sale in favour of the petitioner on 18.5.2013, which resulted in the decree of specific performance. The 1st respondent in the claim petition filed an



objection stating that the claim petition is not maintainable and that the conditional order of attachment was passed on 20.5.2013, whereas the suit for specific performance was filed only on 25.11.2013. It is also stated that the decree obtained by the claim petitioner in O.S. No.695 of 2013 is an *ex parte* decree, and the claim petitioner has no cause of action and is not entitled to any relief claimed. On behalf of the claim petitioner, Exts.A1 to A18 documents were produced. The Executing Court relied on the decision of the Division Bench of this Court in **Kumaran vs. Kumaran** [2011 (1) KLT 252] wherein it was held that the mere existence of a contract of sale or even a decree for specific performance on the basis of an agreement does not, in any manner, affect the title of the vendor who has entered into the contract for sale. In the light of the above decision, the claim petition was dismissed, and the order of attachment was confirmed. Aggrieved, the claim petitioner preferred A.S. No.63 of 2023 before the District Court, Thiruvananthapuram, and the first appellate court concurred with the findings of the trial court, dismissed the appeal. Hence the present appeal.

3. On 4.4.2024, this Court framed the following substantial questions of law for consideration.

(i) If an agreement for sale of immovable property is executed between the purchaser/claim petitioner and the



vendor/judgment debtor, whereafter, an order of attachment is made in a money claim of the decree holder, whether the contractual obligations will prevail over the rights of the attaching creditor?

(ii) Whether the dictum laid down by the Honourable Supreme Court in *Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan and Another* [1990 (3) SCC 291] will undergo any change for the reason that the contract for sale between the claim petitioner/purchaser and the judgment debtor/vendor has not culminated in a sale?

(iii) Whether the trial court as well as the appellate court erred in placing reliance upon *Kumaran v. Kumaran* [2011 (1) KLT 252]? Whether the said judgment is liable to be treated as per incuriam for having not noticed and followed *Vannarakkal Kallalathil Sreedharan* (supra)?

(iv) If attachment is effected on the vendor's property much after the execution of an agreement for sale and if substantial part of the sale consideration has already been paid by the purchaser, whether such attachment by a third party would avail only as against the balance sale consideration due to the vendor, on the premise that the surviving right of the vendor, who had agreed to sell the property, is only to receive the balance purchase money, as held by the Division Bench judgment of this Court in *Ramesan v. Abdul Majeed* [1987 (1) KLT 864]?

4. Heard Sri. D Kishore, the learned counsel appearing for the appellant and Sri. Shajahan M.V., the learned counsel for the 1st



respondent.

5. Sri. D. Kishore, the learned counsel for the appellant, contended that when an agreement for sale has been executed and an advance amount has been paid, the sale does not become void merely because the attachment takes place before the execution of the sale deed. In support of his contention, the learned counsel relied on the decision of this Court in **Ramesan v. Abdul Majeed** [1987 (1) KLT 864]. It is further contended by the learned counsel that conveyance in pursuance to an antecedent agreement of sale of the property which is the subject matter of attachment, will not free the obligation of the vendor in respect of the agreement of sale, nor the agreement of sale will get obliterated because of the attachment obtained by the attaching creditor in a subsequent suit. Reliance is also placed on the decision of the Supreme Court in **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan and Another** [1990 (3) SCC 291]. According to the learned counsel, the provisions of Order 38 Rule 10 of the Code of Civil Procedure squarely apply to the facts of the present case. The learned counsel further pointed out that a Division Bench of this Court in **Kumaran** (Supra), though had held that the possession by a vendee in part performance of a contract for sale does not contain or recognise any element of title in the vendee, the decision was completely misconstrued



by the courts below. In fact, the decision in **Kumaran** (Supra) does not have any bearing on the facts of the present case, and if so, in the light of the decision of the Supreme Court in **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan and Another** [1990 (3) SCC 291] , it must be construed as one rendered *per incuriam*.

6. On the other hand, the learned counsel for the 1st respondent supported the findings of the courts below and contended that the agreement of sale does not confer any title on the appellant and that the execution of the sale deed was much after the order of attachment. In the present case, the order of attachment was passed on 20.5.2013, whereas the suit for specific performance was filed in the month of November 2013. By the time the decree was passed in the said suit, the property was already subjected to attachment. Therefore, it is prayed that the appeal be dismissed, affirming the orders passed by the courts below.

7. I have considered the rival submissions raised across the Bar, perused the judgments of the courts below and the records of the case.

8. The primary question to be considered is whether the appellant has got any right under the agreement of sale. It is pertinent to mention that though the agreement of sale will not confer any title on the appellant, in the present case, what is asserted by the appellant is the entitlement to enforce the agreement of sale over the property under attachment. The



appellant's case is that, on the basis of the agreement of sale, he is entitled to take recourse through law in order to have the sale deed executed.

9. It is pertinent to mention that under Section 55(6)(b) of the Transfer of Property Act, 1882, (the Act, for short), the appellant has got a charge over the property to the extent of the amount which he has paid as advance money. Even under Section 53A of the Act, if a person has been put in possession of the property in part performance of the contract, then he has a charge over the property to the extent of advance money paid. However, for claiming the benefit of Section 53A of the Act, the agreement must be registered.

10. These provisions give a fair indication that the statute has given some sanctity to a contract of sale. It will be wholly impermissible for the courts to obliterate the rights flowing to a person who has entered into a contract of sale and to hold that the said right is lost because of a subsequent attachment by an attaching creditor. It is also equally important to note that an attaching creditor does not have any right over the property except to the extent of his right to claim money out of the property so attached.

11. When a person is claiming under an agreement of sale is placed against a person who has attached the property, necessarily, the person who claims a right under a contract of sale must be given predominance



because of the fact that the conveyance is in pursuance to an antecedent agreement of sale.

12. In **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan and Another** [1990 (3) SCC 291] : [1990 KHC 984], the Supreme Court was called upon to decide the impact of Order 38 Rule 10 of the Code of Civil Procedure, and it was held as in paragraph Nos.5 and 7.

5. We may first draw attention to some of the relevant statutory provisions bearing on the question. Order XXXVIII Rule 10 of the Code of Civil Procedure provides that attachment before judgment shall not affect the rights existing prior to the attachment of persons not parties to the suit. Under Section 40 of the Transfer of Property Act, a purchaser under a contract of sale of land is entitled to the benefit of an obligation arising out of that contract and it provides that that obligation may be enforced inter alia against a transferee with notice. Section 91 of the Trusts Act also recognises this principle that the transferee with notice of an existing contract of which specific performance can be enforced must hold the property for the benefit of the party to the contract. These are equitable rights though not amounting to interest in immovable property within the meaning of Section 54 of the Transfer of Property Act which declares that a contract of sale does not create an interest in the property. On this line of reasoning it has been held by the Madras High Court that the purchaser of an antecedent agreement gets good title despite attachment. See *Paparaju Veeraraghavayya v. Killaru Kamala Devi & Others* [AIR 1935 Mad. 193], *Veerappa Thevar & Ors. v. C.S. Venkataramma Aiyar & Others* [AIR 1935 Mad. 872] and *Angu Pillai*



v. M.S.M. Kasiviswanathan Chettiar [AIR 1974 Mad. 16].

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7. Hence, under a contract of sale entered into before attachment, the conveyance after attachment in pursuance of the contract passes on good title inspite of the attachment. To the same effect are the decisions of the Bombay High Court in Rango Ramachandra Kulkarni v. Gurlingappa Chinnappa Muthal [AIR 1941 Bom. 198] and Yeshvant Shankar Dunakhe v. Pyaraji Nurji Tamboli [AIR 1943 Bom. 145]. The High Court of Travancore- Cochin in Kochuponchi Varughese v. Ouseph Lonan [AIR 1952 Travancore-Cochin 467] has also adopted the same reasoning

13. A Division Bench of this Court in **Ramesan vs. Abdul Majeed** [1987 KHC 250], considered the validity of a sale in pursuance to an agreement of sale and held in paragraph Nos.7 and 8 as follows :

“ 7. Under Ext.A1 second respondent had agreed to execute sale deed in regard to the property in favour of the first respondent. Part of the consideration was paid on the date of Ext.A1 and balance consideration was paid subsequently. The recitals in Ext.A1 would show that first respondent had been put in possession of the property by the second respondent on the basis of the agreement of sale. A person holding possession of the property in pursuance of an agreement to sell cannot have any interest in the property as conceived in the provisions of the Transfer of Property Act, but he has a right to insist on execution of the sale deed in his favour on payment of balance consideration; and conversely there is an obligation in the executor of the agreement to receive balance consideration and



execute the sale deed. On failure of the latter to do so, there is a right in the executee of the agreement to file a suit for specific performance and have the sale deed executed. He can also use his possession under the agreement as a shield in terms of S.53(A) of the Transfer of Property Act. All these rights and privileges vesting in an executee under agreement to sell like the first respondent were existing at the time when the attachment was effected. At the time of such attachment, even though title as such vested in the executor of the agreement, in effect and substance his right was only to receive the balance consideration amount and his duty was to receive the same and execute the sale deed. In effect what was attached was only that right and not the corpus of the property as such.

8. Respondents 1 and 2 entered into an agreement of sale prior to attachment. Subsequent release deed was only in pursuance of the earlier agreement of sale between the parties. When the vendee executed the release deed, he acted only as he was obliged to do under the earlier agreement of sale. It was not a fully independent transaction. Such a sale is apparently contrary to the attachment within the meaning of S.64 CPC. However, as we have already indicated, on the date of the attachment, the right of the person who agreed to sell the property was only to receive the balance purchase money. The attachment would be effective only in regard to that right. A person who on the strength of the earlier agreement to sell obtains sale deed subsequent to attachment even after paying the entire balance consideration, would hold title to the



property only with the charge in regard to balance sale consideration. The attachment would be effective in regard to such balance consideration. The attachment in such a case would not render the subsequent sale void. The sale will stand but with the charge regarding the purchase price which remained unpaid on the date of attachment. Attachment will operate regarding such unpaid purchase price and subsequent payment of price will not operate against the attachment. Sale as such will not be void.”

14. In the light of the decisions as above, this Court must decide whether the decision of the Division Bench in **Kumaran** (Supra) qualifies to be decided *per incuriam*. Though it may be possible to conclude that the principles laid down by the Division Bench was entirely on a different context altogether with regard to the right of a person being put in possession as a part performance of the contract, the same cannot be made applicable in a case where an agreement of sale is being put to execution through a decree of specific performance. Therefore, in the light of the categorical pronouncement by the Supreme Court in **Vannarakkal Kallalathil Sreedharan** (Supra), the decisions of the Division Bench of this Court in **Ramesan** (Supra) and in **Kumaran** (Supra) cannot be held to be binding law and qualifies itself to be rendered *per incuriam*.

15. In **Rajender Singh Vs. Ramdhar Singh and Others [(2001) 6 SCC 213]**, the Supreme Court reiterated the position of an



attaching creditor qua the obligation of a judgment debtor arising under a contract of sale and held that the attachment would not be free from obligation arising under a contract of sale.

16. It must be remembered that the attaching creditor cannot have a better title than the Judgment debtor. This view finds support from the decision of the Supreme Court in **Prabhu L.K@L. Krishna Prabhu Vs K.T. Mathew @ Thampan Thomas [2025 KHC 6975 : 2025 SCC Online 2577]**. It is pertinent to mention that the decision in **Vannarakkal Kallalathil Sreedharan** (Supra) was approved by the Supreme Court.

17. Be that as it may, it is beyond cavil that the order of attachment certainly operates to the extent of the balance amount which has been paid by the appellant in execution of the same in pursuance to the decree for specific performance. Unfortunately, the courts below did not consider the above aspects in proper perspective. Thus, the approach of the courts below is clearly flawed and has been rendered without adverting to the basic tenets of law which governs the right of the party in a contract of sale. If the findings of the courts below are sustained, then necessarily, the rights of the parties flowing under the contract of sale become redundant. In such circumstances, this Court is of the view that the orders passed by the courts below require interference.



18. Accordingly, the substantial questions of law are answered in favour of the appellant as follows.

(a) The contractual obligations under an agreement of sale will prevail over the rights of the attaching creditor.

(b) The decision in **Vannarakkal Kallalathil Sreedharan v. Chandramaath Balakrishnan and Another** [1990 (3) SCC 291] will not undergo any change for the reason that the contract for sale between the claim petitioner/purchaser and the judgment debtor/vendor has not culminated in a sale.

(c) The decision in **Kumaran v. Kumaran** [2011 (1) KLT 252] is decided per incuriam, having not noticed and followed **Vannarakkal Kallalathil Sreedharan** (Supra).

(d) If a property which is subject matter of a contract of sale is attached, then the attachment will be enforceable against the balance amount payable by the purchaser as held by this Court **Ramesan v. Abdul Majeed** [1987 (1) KLT 864].

19. Resultantly, the order passed in E.A. No.268 of 2018 in E.P. No.67 of 2017 in O.S No.576 of 2013, by the Additional Sub Court -I, Thiruvananthapuram, as confirmed by the District Court, Thiruvananthapuram, in A.S. No.63 of 2023, is set aside. E.A. No.268 of 2018 in E.P. No.67 of 2017 in O.S No.576 of 2013 before the Additional



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Sub Court-I, Thiruvananthapuram shall stand allowed. The attachment over the property is thus lifted. However, the first respondent shall be entitled to claim the amount deposited by the appellant before the Additional Sub Court-I, Thiruvananthapuram, in pursuance to the decree passed in O.S. No.695 of 2013. If such an application is filed, the courts shall consider the same in accordance with law and grant the relief as prayed for. No Costs

Ordered Accordingly.

Sd/-
EASWARAN S.
JUDGE

NS