

## Kattil Vayalil Parkkum Koiloth Moideen Vs Mannil Paadikayil Kadeesa Umma and Others

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 24, 1991

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 99, 148A(1)

**Citation:** AIR 1991 Ker 411 : (1991) 3 ILR (Ker) 663

**Hon'ble Judges:** P. Krishnamoorthy, J

**Bench:** Single Bench

**Advocate:** N.L. Krishnamoorthy, for the Appellant; K.P. Dandapani, for the Respondent

**Final Decision:** Allowed

### Judgement

@JUDGMENTTAG-ORDER

P. Krishnamoorthy, J.

The decree-holder is the revision petitioner. The suit is for partition and separate possession of the plaintiffs share.

A preliminary decree was passed in the case. During the pendency of the application for passing of a final decree, respondents herein filed an

application for implcading them as additional parties contending that their predecessors had an oral lease in respect of the suit property and that it

devolved on them. That application for impleading them was dismissed by the trial court holding them an unnecessary parties to the suit. Thereafter

a final decree was also passed.

2. After the final decree was passed, the respondents filed a caveat u/s 148-A of the CPC praying that they also may be given notice before any

order is passed while executing the decree on an application made by the decree-holder. Under the impugned order dt. 10-10-1990 the lower

court lodged the caveat. The revision is by the decree-holder against the above order lodging the caveat filed by the respondents.

3. The contention of the counsel for the revision petitioner is that the application for impleading the respondents in the suit as necessary parties was

dismissed by the trial court at the trial stage and that they cannot claim a right to appear before the court on the filing of the execution application.

The counsel for the revision petitioner contended that if they have any right or interest in the property or possession, their remedy is only to

obstruct when the Amin goes to the property for effecting delivery or to file an application under Order XXI Rule 99 if they are dispossessed in

spite of their objection. According to him on the filing of an execution application they have no right to come to court and oppose the application of

the decree-holder for executing the decree. In other words, the contention of the revision petitioner is that they are not entitled to have an

anticipatory obstruction of any order of delivery that may be passed in their favour and in that view of the matter they are not entitled to lodge a

caveat u/s 148-A of the C.P.C.

4. The question to be decided is as to whether in such circumstances the respondents are entitled to lodge a caveat. Section 148-A(1) which is

relevant for the purpose of this case is to the following effect:

Where an application is expected to be made, or has been made, in a suit or proceeding instituted or about to be instituted, in a Court, any person

claiming a right to appear before the Court on the hearing of such application may lodge a caveat in respect thereof.

From the above provision it is clear that if any application is expected to be made in a suit or proceeding or about to be instituted, any person

claiming a right to appear before the court on the hearing of such an application alone may lodge a caveat. After hearing counsel for the petitioner

and the respondents I am clearly of the opinion that the respondents herein have no right at this stage to appear before the court and oppose the

application filed by the decree-holder for execution of the decree. As stated earlier the case of the respondents is that they are in independent

possession of the property on the basis of an oral lease. In other words, their case is that they cannot be dispossessed from the property in

execution of the decree. It is well settled by the decisions of this court that such a person is not entitled to file an application for establishing his right

before he is actually sought to be evicted. His right is only to obstruct when the Amin goes to deliver the property or, if he is dispossessed in spite

of his obstruction, to file an application under Rule 99 of Order XXI, CPC for re-delivery of the property. In this connection see the decisions of

this court in *Mammoo v. Krishnan* 1978 KLT 901, *Chandrika v. Gangadharan* 1983 KLT 953 and *Raman v. Karthikeyan* 1984 KLT 1071.

These decisions by learned single Judges of this Court were considered by a Division Bench of this Court in *K.A. Prabhakaran Vs. Kuttian*

*Prakashan and Another*, and it was observed as follows: --

A plain reading of the provisions of Order XXI makes it clear that no application for adjudication of the right, title and interest of an obstructor

would lie before he is dispossessed in execution of a decree to which he is not a party. The only remedy of a dispossessed obstructor is to apply

under Rule 99 to the execution court and have his claim adjudicated upon by the execution court itself. A separate suit at his instance after

dispossession will not be maintainable in view of the aforesaid provisions of the C.P.C. as amended in 1976. This does not, however, preclude the

obstructor from having recourse to a civil court by way of a separate suit before he is dispossessed in execution of a decree to which he is not a

party.

From the aforesaid decisions of this Court it is clear that the respondents in this case have no right to appear before the court on the hearing of the

execution petition which the decree-holder may file and in that view they are not entitled to lodge a caveat.

5. Counsel for the respondents placed very great reliance on a single Judge's decision of the Andhra Pradesh High Court reported in Tahera

Sayeed Vs. M. Shanmugam and Others, ). In that decision it is no doubt true that His Lordship Ramaswamy J. held that even before an order for

delivery is passed a person who is said to be in possession of the property is entitled to move the court for an adjudication of his rights as

contemplated under Order XXI Rule 101, CPC. In view of the catena of decisions of our Court taking a different view and which I am bound to

follow, I have to respectfully dissent from the decision of the Andhra Pradesh High Court.

6. It is also clear that the provisions of Section 148-A will be attracted only in cases where the caveator is entitled to be heard before any order is

passed on the application already filed or proposed to be filed. As held by this Court in a number of decisions mentioned above, the respondents

herein have no right to be heard on the execution application filed by the decree-holder and accordingly they are not entitled to lodge any caveat.

To the same effect is the decision in Nav Digvijaya Co-operative Housing Society Limited Vs. Sadhana Builders and Others, and Chloride India

Limited Vs. Ganesh Das Ramgopal,

7. In view of what is stated above I hold that the caveat filed by the respondents is not maintainable and accordingly the caveat lodged by the

respondents and accepted by the lower court is set aside.

The Civil Revision Petition is allowed as indicated above. There will be no order as to costs.