

**Punnen Abraham Vs. Varkey Varkey**

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**SooperKanoon Citation :** [sooperkanoon.com/719486](http://sooperkanoon.com/719486)

**Court :** Kerala

**Decided On :** Dec-10-1963

**Reported in :** AIR1965Ker145

**Judge :** T.K. Joseph, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rules 58 and 60

**Appeal No. :** Civil Revn. Petn. No. 741 of 1962

**Appellant :** Punnen Abraham

**Respondent :** Varkey Varkey

**Advocate for Def. :** V. Sankara Menon, Adv.

**Advocate for Pet/Ap. :** Manual T. Paikaday and; L.I. Thattil, Adv.

**Judgement :**

ORDER

**T.K. Joseph, J.**

1. This Civil Revision Petition has been preferred by the decree-holder against an order allowing a claim to properties attached in execution of the decree. The learned Munsiff held:

'I am satisfied that on the date of the attachment the petitioner had some interest in the properties and possession of items 1 to 7.'

2. The main point raised on behalf of the petitioner is that the court below failed to decide what it was bound to do. The argument is that when the court finds that the claimant is in possession it has also to decide whether the possession, of such person is in trust for or on behalf of the Judgment-debtor. This position is supported by the decision of the Allahabad High Court in Bachu Lal v. Ram Din, AIR 1939 All 117. It was urged that the absence of such a finding vitiates the order in view of the circumstances relied on such as that, all or the major part of the judgment-debtor's properties including his residential house have been transferred for an inadequate price by the execution of a sale deed in a distant Sub-Registrar's Office, etc. I am not expressing any opinion on the evidence but I must observe that the finding on the question of possession is defective. I would therefore allow the Civil Revision Petition, set aside the order and remand the claim petition for fresh decision according to law. No costs.

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