IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

TUESDAY, THE 10TH DAY OF MARCH 2015/19TH PHALGUNA, 1936

CRP.No.44 of 2015

(OS 30/2000 of SUB COURT, THIRUVALLA)

REVISION PETITIONER/DECREE HOLDER-PLAINTIFF:

A.E.MATHEW, ATHYALIL VEEDU,
PERUMPETTY MURI, PERUMPETTY VILLAGE,
MALLAPPALLY TALUK.

BY ADVS.SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS

RESPONDENTS/JUDGMENT DEBTORS-DEFENDANTS:
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1. M/S.PUTHOOR BANKERS, MARAMON,
REPRESENTED BY ITS MANAGING PARTNER,
ABRAHAM PUTHOOR THOMAS,
PUTHOOR VILLA, NEDUMPRAYAR,
MARAMON - 689 549.

2. ABRAHAM PUTHOOR THOMAS @ SUNNY,
PUTHOOR VILLA, NEDUMPRAYAR,
MARAMON - 689 549.

R1 BY ADV. SRI.BECHU KURIAN THOMAS (CAVEATOR)

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 10-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.BHAVADASAN, J.

Civil Revision Petition No.44 OF 2015

Dated this the 10th day of March, 2015.

O R D E R

Indeed strange are the ways of court in dealing with matters in execution. The petitioner, who is the decree holder in two suits namely, O.S.No.71/1999 and O.S.No.30/2000 filed against the same judgment debtors instituted two execution petitions namely, E.P.No.28/2002 to execute the decree in O.S.No.71/1999 and E.P.No.29/2002 to execute the decree in O.S.No.30/2000.

2. The properties belonging to the judgment debtors were brought to sale and sale was held initially in E.P.No.28/2002 that being the decree in the prior suit. The upset price was fixed at Rs.9 lakhs. That sale was in pursuance to the order dated 18.12.2009 wherein it was specifically stated that sale of the properties for realisation of the decree debt in both the execution petitions shall be held in E.P.No.28/2002 and the property was

sold for Rs.9 lakhs. Since there were no stranger bidders, decree holder purchased the property in terms of the order of the court and sale certificate was issued. On issuance of sale certificate, both the execution petitions were proceeded with and as per the provisions of the Indian Contract Act, the decree holder appropriated the amount first towards the first decree which was executed through E.P.No.28/2002 and the balance amount was appropriated to the second decree executed through E.P.No.29/2002. As regards the second decree ie. in O.S.No.30/2000, petitioner instituted E.P.No.24/2012 seeking to realise the balance amount due to him in the second suit i.e. O.S.No.30/2000.

3. This Court is given to understand that the judgment debtors filed no objections. Strangely enough the court below dismissed E.P.No.24/2012 on two grounds. They are, (1) there was no order for rateable distribution and (2) the execution petition is barred by limitation.

4. Learned counsel appearing for the petitioner pointed out that both the grounds are unsustainable both in law and on facts.

The question of rateable distribution does not arise for consideration because decrees were held by same person and there is no question of different persons holding decrees. As far as the ground of limitation is concerned, learned counsel pointed out that the court below at least should have noticed the date of the decree passed. The decree is of the year 2001 and the execution petition was filed in 2012. Obviously, it cannot be barred by limitation. Therefore, learned counsel pointed out that both the grounds are clearly unsustainable and the execution petition has to be proceeded with.

5. Learned counsel appearing for the respondents-judgment debtors found it extremely difficult to defend the order of court below. As rightly pointed out by the learned counsel for the petitioner, going by the provisions of Indian Contract Act, decree holder is entitled to adjust the amount first towards the first decree and the balance towards the second decree. The question of rateable distribution does not arise for consideration for the simple reason that both the decrees were held by same person and there is no question of different persons holding the

decree. Obviously, that ground cannot stand.

6. Clearly unsustainable is the finding of the court below regarding limitation. As pointed out by the learned counsel for the petitioner, the decree is of the year 2001 and the execution petition was filed in 2012. As per the provisions of Limitation Act, the period is 12 years. If that be so, how E.P.No.24/2012 barred by limitation. That ground is also clearly unsustainable.

In the result, this petition is allowed and the impugned order is set aside and the matter is remanded to the execution court for disposal in accordance with law. Both parties will appear before the execution court on 01.04.2015 and E.P.No.24/2012 will stand restored to file.

Sd/-

P.BHAVADASAN
JUDGE

smp

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P.A. to Judge.