

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

CRP.No. 155 of 2015 ()

**AGAINST THE ORDER/JUDGMENT IN CMA 17/2013 of ADDITIONAL DISTRICT
COURT,KOTTAYAM DATED 27-09-2014**

AGAINST THE ORDER/JUDGMENT IN OS 200/2007 of PRL.SUB COURT,KOTTAYAM

PETITIONER(S)/1ST RESPONDENT/DECREE HOLDER:

**MANICKANAMPARAMBIL CHITTY FUND
UDAYAMPEROOR, REPRESENTED BY ITS MANAGING DIRECTOR
THANKAMMA MATHEW**

**BY ADVS.SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE
SMT.ACHU SUBHA ABRAHAM**

**RESPONDENT(S)/APPELLANT AND 2ND RESPONDENT/2ND AND 1ST JUDGMENT
DEBTORS:**

**1. K.UNNIKRISHNAN NAIR
S/O. P.K. NAIR, LEKSHMI, PARAVOOTHARA MURI,
SOUTH PARAVOOR, THEKKEDATH HOUSE
KIZHAKKUMCHERRY THEKKEMURY, NADUVILE VILLAGE
VAIKOM TALUK 686 141**

**2. USHA, W/O. UNNIKRISHNANA NAIR,
THEKKEDATH HOUSE, KIZHAKKUMCHERRY THEKKEMURY
NADUVILE VILLAGE, VAIKOM TALUK 686141**

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

**THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON
19-10-2015, ALONG WITH CRP. 234/2015, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:**

R.AV

K. ABRAHAM MATHEW, J.

C.R.P.Nos.155 of 2015 and 234 of 2015

Dated this the 19th day of October, 2015

C O M M O N O R D E R

Petitioner is the decree holder in EP.298 of 2009 and EP.48 of 2010 of Sub Court, Kottayam. The decrees sought to be executed were passed by Sub Court, Ernakulam in O.S.195 of 1997 and O.S.No.200 of 2007 respectively. The decrees were for realisation of money. The property of the second respondent was sold in auction. The first respondent, husband of the second respondent, filed applications under Order 21 Rule 90 C.P.C. The learned Sub Judge observed that there is no valid ground to set aside the sale and dismissed them. These were challenged in CMA.2 of 2013 and CMA.17 of 2013. Though the learned District Judge took notice of the contention that since the first respondent has no right in the property his applications under Order 21 Rule 90 C.P.C were not maintainable he allowed the CMAs for the simple reason that the impugned orders of the executing court are not a speaking orders. He also observed that the petitioner/JD can raise the contention of non maintainability in the

executing court. These are challenged in this C.R.Ps

2. Heard.

3. Under Order 21 Rule 90 C.P.C only a person whose interests are affected by the sale can maintain an application. Admittedly, the first respondent has no right in the property. The applications filed by him were not at all maintainable. The EPs were filed in 2009 and 2010. The applications under Order 21 Rule 90 were filed in 2012. At this distance of time it is not proper to direct the petitioner to agitate the matter in the executing court. The judgment in the CMAs are liable to be set aside.

In the result, these C.R.Ps are allowed. EA.Nos.197 of 2012 and 748 of 2012 filed by the first respondent stand dismissed on a ground other than the one mentioned in the orders of the executing court. It is made clear that if the execution applications allegedly filed by the second respondent under Order 21 Rule 90 C.P.C are pending, they shall be disposed of in accordance with the law notwithstanding the dismissal of these C.R.Ps.

sd/-

**K. ABRAHAM MATHEW
JUDGE**

R.AV

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PA to Judge