

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN  
&  
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

FAO.No. 80 of 2012 ()

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(AGAINST THE ORDER/JUDGMENT IN E.A.NO.291/2011 IN E.P.28/2009 IN OS  
90/2006 of SUB COURT, MANJERI)

APPELLANT(S)/PETITIONER:

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C.P.ABOOBACKER,  
S/O.MUHAMMED MASTER, AGED 48 YEARS, PROPRIETOR,  
M/S.NATIONAL ELECTRONIC, KONDOTTY AMSOM,  
KOLATHUR DESOM, ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADVS.SRI.V.T.MADHAVANUNNI  
SRI.V.A.SATHEESH  
SRI.J.ABHILASH

RESPONDENT(S)/RESPONDENTS:

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1. M/S. GODREJ AND BOYCE MANUFACTURING CO.LTD,  
PIROJSHA NAGAR, VIKHROLI, MUMBAI  
REPRESENTED BY THE REGIONAL COMMERCIAL MANAGER AND POWER OF  
ATTORNEY P.RAGHAVAN  
S/O.V.R.KURUP, AGED 52 YEARS ERNAKULAM BRANCH OFFICE,  
KOCHI- 682035.

2. MUJEEB RAHMAN,  
S/O.ALIHASSAN MASTER, AGE NOT KNOWN, KALARIKKAL  
PANTHALAKATH HOUSE, AREECODE POST, MALAPURAM DISTRICT.673 639

R1 BY ADV. SRI.BIJU HARIHARAN  
R1 BY ADV. SRI.P.J.ANTONY JOSEPH MARIADAS  
R2 BY ADV. SRI.SAIJU S.  
R2 BY ADV. SRI.K.SAJIMON

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON  
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**THOTTATHIL B. RADHAKRISHNAN &  
SUNIL THOMAS, JJ.**

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**FAO. No.80 of 2012**  
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Dated this the 2<sup>nd</sup> day of July, 2015

**JUDGMENT**

**Thottathil B. Radhakrishnan, J.**

This appeal is against an order dismissing an application under Order XXI Rule 90 CPC.

2. At the outset, we may note that this Court, while admitting the appeal, had granted an interim order of stay on condition that the appellant deposits an amount of Rs.8,00,000/- within one month from the date of the order, i.e., 2/3/2012. No deposit has been made.

3. We have examined the judgment, decree and the application under Order XXI Rule 90 and have heard the learned counsel for the appellant.

4. The suit was filed on the basis of a contract between the plaintiff and the defendant. There was an agreement. The decree was granted without contest, in the sense, that the defendant appeared and admitted the plaint claim. The court below passed the decree allowing recovery of money and granted the defendant six months' time to pay off. It also made a charge over the plaint

schedule property for the decree debt, if the decree was not satisfied within six months. There are four items of properties over which charge was created.

5. Since the decree was left without being satisfied, the decree holder levied execution. That led to the sale which was hence challenged invoking Order XXI Rule 90 CPC. There is third party auction purchaser as well.

6. The court below rightly noted that the judgment debtor did not object to the valuation of the property when he received notice under Order XXI Rule 66. Even if we take it that notwithstanding the fact that Order XXI Rule 64 applies only to attachment, the court below ought to have considered whether the entire property ought to have put to sale, we see that no evidence was adduced in support of the application under Order XXI Rule 90 except the statement in the application that the property is worth more than crores of rupees. In spite of different postings, the decree holder did not tender evidence. It is submitted by the learned counsel for the appellant that the application for issuance of commission to value the property was filed. We are of the view that, that was insufficient because valuation of the property does not depend upon any local inspection of any advocate commissioner. There are different modes of proving the valuation of land in a particular area. The Government declared valuation rates, as

also the value of the property going by the transaction in neighbourhood or at least, dependable testimony ought to have been tendered. We see that the appellant does not demonstrate any real interest to have the sale set aside by prosecuting the challenge extended. The impugned sale is not vitiated on any count of irregularity, illegality or impropriety in the matter of publication or its conduct. The court below was justified in dismissing the application to set it aside. The impugned order is hence affirmed.

In the result, this appeal is dismissed.

**Sd/-**

**THOTTATHIL B.RADHAKRISHNAN**  
**Judge**  
**Sd/-**

**SUNIL THOMAS**  
**Judge**

dpk

**/true copy/ PS to Judge.**

