

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR JUSTICE P.B.SURESH KUMAR

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

FAO.No.117 of 2012

**I.A.NO.381/2010 IN O.S. NO.827/2008 OF THE PRINCIPAL SUB COURT,
THIRUVANANTHAPURAM.**

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APPELLANT/CLAIM PETITIONER:

**NIZARUDEEN,S/O.MOHAMMED KASSIM,
AGED 39 YEARS,ANEEZA MANZIL,
CHEMPAKAMANGALAM,KORANI.P.O,
THIRUVANANTHAPURAM.**

**BY ADVS.SRI.J.JAYAKUMAR
SMT.V.S.BEENA**

RESPONDENT'S/PLAINTIFF:

- 1. M/S.SREE GOKULAM CHIT AND FINANCE CO. PVT. LTD.
28,MUTHUGRAMANI STREET,MYLAPOOR,CHENNAI.
REPRESENTED BY MANAGING DIRECTOR
GOKULAM GOPALAN-600001.**
- 2. ABDUL RAHIM RAFI,RAHIM MANZIL,
THEKETHIL,KADAMUKKU,KANIYAPURAM POST,
THIRUVANANTHAPURAM-695105.**

**R1 BY ADVS.SRI.K.S.BABU
SMT.N.SUDHA
SRI.K.S.GOPI
SRI.BABU SHANKAR
SRI.VIPIN VISWAN**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD
ON 15-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

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P.B.SURESH KUMAR, J.

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F.A.O.No.117 of 2012

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Dated this the 15th day of June, 2015.

J U D G M E N T

The order on I.A.No.381 of 2010 in O.S.No.827 of 2008 on the file of the Principal Sub Court, Thiruvananthapuram is under challenge in this appeal.

2. O.S.No.827 of 2008 is a suit filed by the first respondent against the second respondent for recovery of Rs.48,84,600/- with interest. At the time of institution of the suit, the first respondent obtained an order of attachment before judgement over an item of property owned by the second respondent as per order on I.A.No.4447 of 2008. Thereupon, the appellant filed I.A.No.381 of 2010 seeking orders to lift the attachment effected over the property. I.A.No.381 of 2010 was opposed by the first respondent. The court below, as per the order impugned in this appeal, dismissed I.A.No.381 of 2010. The appellant is aggrieved by the order on I.A.No.381 of 2010. Hence this appeal.

3. Heard the learned counsel for the appellant and the

learned counsel for the first respondent.

4. The suit O.S.No.827 of 2008 was filed on 8.8.2008 and the order of attachment was obtained by the first respondent on the same day. In the affidavit filed in support of the application seeking attachment before judgement, it is stated by the first respondent that the property sought to be attached is a property mortgaged to the first respondent by the second respondent by depositing the title deeds of the property and that the attachment is sought with a view to prevent alienation of the property. According to the appellant, he purchased the property on 3.5.2007 and therefore, the property should not have been attached by the court below on 8.8.2008. Even though the appellant has not specifically stated in the application filed by him that the property was under mortgage to the first respondent when he purchased the same, the averments in the application would indicate that the appellant does not dispute the said fact. Further, it is stated by the first respondent in the affidavit filed in support of the application for attachment that the title deeds of the property are with them. It is also seen that the title deeds of the

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property of the second respondent were produced by the first respondent before the court below at the time of institution of the suit itself. It is thus clear that the appellant had purchased the property during the subsistence of the mortgage in favour of the first respondent. The appellant cannot, therefore, claim that he has independent title over the attached property. There is, therefore, no merit in the application filed before the court below to lift the attachment, and the impugned order dismissing the said application is in order.

The appeal, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.

Sd/-P.B.SURESH KUMAR, JUDGE.

Kvs/-

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PA TO JUDGE.