

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

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

FAO.No. 227 of 2012 ()

E.A.NO.320/2011 IN W.P.319/08 IN O.S.109/2001 OF the PRINCIPAL SUB
COURT, THIRUVANANTHAPURAM DATED 13.04.2012

APPELLANT/PETITIONER:

SARISH.S.R.
S/O.LATE RENGANATHAN T.C 39/802 PALAYATHU
LANE, CHALAI, THIRUVANANTHAPURAM

BY ADVS.SRI.G.SUDHEER
SMT.N.P.ASHA

RESPONDENT/RESPONDENT/DECREE HOLDER:

VIJAYAKUMAR
TC 9/1971 KOCHUKATTACKAL VEEDU, SASTHAMANGALAM
THIRUVANANTHAPURAM 695001

BY ADV. SRI.M.NARENDRA KUMAR
BY ADV. SRI.P.B.PRADEEP
BY ADV. SMT.LAYA SIMON

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

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

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F.A.O.No.227 of 2012

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Dated this the 15th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order dismissing an application under Order XXI Rule 90 of the Code of Civil Procedure.

2. Heard.

3. The impugned sale was conducted on 07.04.2011. The appellant, who is the son of the sole judgment debtor, pleaded before the court below that his father had expired on 24.09.2009. Nothing is there to show that any of the legal representatives of the deceased judgment debtor was brought on record before the sale. We, however, see that the court below addressed its consideration primarily on the issue as to whether the settlement made by the father in favour of the appealing son on 15.01.2008 was a gift which could stand over and above the attachment effected. We dissuade ourselves from saying anything on that for the time being since the fact that the judgment debtor was dead when the sale was conducted is reason sufficient enough to set aside the order impugned and remit the application under Order XXI Rule 90 of the

C.P.C for consideration of the court below. We record the submission on behalf of the decree holder that though the court below had sold only a part of the property proclaimed for sale, the decree holder would be satisfied, if he is adequately paid off.

For the aforesaid reasons, this appeal is allowed and the impugned order is vacated. Resultantly, the interlocutory application on which the impugned order was passed will stand remitted to the executing court for reconsideration and disposal in accordance with law. Parties are directed to mark appearance before the court below on 27.07.2015.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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