

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 3RD DAY OF JULY 2015/12TH ASHADHA, 1937

FAO.No. 248 of 2012 ()

AGAINST THE ORDER IN E.A.NO.286 OF 2010 IN E.P.NO.14/2005 IN OS
561/1995 of ADDL.SUB COURT,NORTH PARAVUR DATED 21-11-2011

APPELLANT/PETITIONER/JUDGMENT DEBTOR NO.2:

P.J. MATHAI
S/O.YOHANNAN, PARUTHALAYIL HOUSE, ERINGOL P.O.
PEECHINMMUGAL, PERUMBAVOOR

BY ADV. SRI.N.K.MOHANLAL

RESPONDENT/RESPONDENT/DECREE HOLDER:

FEDERALBANK
THOTTAKKATTUKARA BRANCH, NEAR PARAVUR KAVALA, ALUVA.

BY ADV. SRI.K.NARAYANAN (PARUR)
BY ADV. SRI.ALUNKAL GEORGE

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 03-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

=====

F.A.O.No.248 of 2012

=====

Dated this the 3rd day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is against an order in an application under Order XXI Rule 90 of the Code of Civil Procedure which was dismissed by the executing court.

2. Before proceeding further, we may notice that taking into account the total outstanding, an interlocutory order was issued at the stage of admission on 26.03.2013 granting stay on condition of payment of amounts. Nothing has been paid till now.

3. Hearing learned counsel for the appellant and learned counsel for the respondent quite in extenso, we see that the court below has correctly concluded under point No.2 that the application was time barred and no relief could be granted by making reference to Section 5 of the Limitation Act. In so far as the material aspects are concerned, the court below has discussed the rival contentions under point No.1 and has concluded that there was no reason to hold that the proclamation and sale was conducted in any manner which could be termed as irregular, illegal or with material

irregularity. There is no reason shown to vacate the impugned order.

4. Be that as it may, we record the submission on behalf of the judgment debtor No.2/appellant that he intends to pay off the bank and obtain re-conveyance.

In the result, this appeal is dismissed clarifying that this judgment and the proceedings before the court below will not stand in the way of the appellant requesting the respondent/decreed holder/ auction purchaser/bank to re-convey the property on such agreed terms as may be just and reasonable. Having regard to the totality of the facts and circumstances, we are sure that the respondent will take a sympathetic attitude if there is a positive approach from the appellant in that regard.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

Sbna

True Copy /

P.A to Judge