

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 13TH DAY OF AUGUST 2015/22ND SRAVANA, 1937

Ex.FA.No. 24 of 2015 ()

(AGAINST ORDER DATED 09.07.2015 IN E.A.NO.82/2014 IN
E.P.NO.91/2010 IN O.S.NO.139/2004 OF SUB COURT, CHERTHALA)

APPELLANT(S)/PETITIONERS:

1. SARAH VARGHESE
W/O. VARGHESE JACOB, MUTHU THOTTATHIL HOUSE
PALARIVATTOM P.O., PALARIVATTOM DESOM,
VENNALA VILLAGE
KANAYANNOOR TALUK, ERNAKULAM.
2. MARIAM OOMEN,
W/O. OOMMEN GEORGE, ARIKUPURATH HOUSE,
PARUMALA P.O., PARUMALA DESOM,
KADAPRA VILLAGE, KANAYANNOOR TALUK
ERNAKULAM.

BY ADV. SRI.KOSHY GEORGE

RESPONDENT(S)/RESPONDENTS - DECREE HOLDER AND JUDGMENT DEBTOR:

1. N.ABDUL MAJEED
S/O. NAINA MUHAMMED, 68A, ABDUL HAMEED STREET
ARTHANGI P.O., PUDUKOTTAI DISTRICT
TAMILNADU - 622 001.
2. ABDUL GAFOOR, (JD),
S/O. LATE BAPUKUTTY, VELIPARAMBIL
AROOR P.O., CHERTHALA, PIN - 688 534.

THIS EXECUTION FIRST APPEAL HAVING COME UP FOR
ADMISSION ON 13-08-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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Ex.F.A.No.24 of 2015
.....

Dated this the 13th day of August, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

- 1.This appeal is against an order passed by the executing court on an application filed invoking Order XXI Rule 97 of the Code of Civil Procedure.
- 2.We have heard the learned counsel for the appellants.
- 3.The decree holder obtained a decree against the second respondent and put it in execution. In the course of that execution, property under attachment was brought to sale. The sale was completed and the property was sold. Thereafter, an application under Order XXI Rule 97 CPC was filed also making reference to the provisions of Order XXI Rule 58 CPC relating to adjudication of the claim. The appellants were, essentially, making a claim on the basis of being transferees of an auction purchaser in an independent Debt Recovery Tribunal procedure

which was generated by the Bank as against the judgment debtor Abdul Gafoor. So much so, the court below was justified in taking the view that the sale having been taken place and the property having been sold, the appellants could not have raised a claim like this before the executing court. This we say, notwithstanding the fact that the court below was also justified in taking the view that the application was unduly delayed. We are sure that the impugned order does not stand in the way of the appellants seeking such other remedies, in accordance with law, as may be available to them in different jurisdictions. This appeal, therefore, fails.

In the result, this appeal is dismissed without prejudice to the appellants seeking such other remedies as may be available, in accordance with law.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)