

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

FRIDAY, THE 6TH DAY OF FEBRUARY 2015/17TH MAGHA, 1936

Ex.SA.No. 3 of 2015 ()

AGAINST THE JUDGMENT IN A.S.NO. 116/2011 of II ADDITIONAL DISTRICT
COURT, ERNAKULAM DATED 27-06-2014

AGAINST THE ORDER IN E.A.NO.170/2010 IN E.P.NO.57/2010 IN O.S.NO.280/2001 OF
PRINCIPAL MUNSIF'S COURT, ERNAKULAM

APPELLANT(S)/APPELLANTS/CLAIM PETITIONERS:

1. THANKACHAN, AGED 50 ,
S/O.VARGHESE, PALTHUTHAYIL HOUSE, POONKAVU
PATHIRAPPILLY PO., ALAPPUZHA
NOW RESIDING AT VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM, PIN-682304
2. ROSILY THANKACHAN, AGED 47,
W/O.THANKACHAN, NOW RESIDING AT VIKRAMATH HOUSE
MARADU VILLAGE, KANAYANNUR TALUK, ERNAKULAM, PIN-682304

BY ADV. SRI.B.S.SURESH KUMAR

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. RAJAKRISHNAN, AGED 48,
S/O.KRISHNAN, SOUPARNIKA, 98
34/160, GIRINAGAR NORTH, ERNAKULAM VILLAGE
KANAYANNUR TALUK, ERNAKULAM DISTRICT, PIN-682020
2. TELMA, AGED 48,
D/O.SOULO @ XAVIER, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM, PIN-682304
3. TENCY, AGED 30,
D/O.SOULO @ XAVIER, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM, PIN-682304
4. LAISSA, AGED 28,
D/O.SOULO @ XAVIER, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM, PIN-682304
5. TELS, AGED 54,
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM, PIN-682304
6. THANKAMANI, AGED 52,
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNAKULAM, PIN-682304

7. JESSY, AGED 50,
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNKAULAM, PIN-682304
8. OMANA, AGED 48 (DIED)
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNKAULAM, PIN-682304
9. V.T.ANNAKKUTTY, AGED 86,
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNKAULAM, PIN-682304
10. SHERLY, AGED 34,
D/O.VINCENT, VIKRAMATH HOUSE, MARADU VILLAGE
KANAYANNUR TALUK, ERNKAULAM, PIN-682304
11. TELMA
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, ARAYED NORTH P.O.,
ALAPPUZHA DISTRICT, PIN-682304
12. JIJO VARGHESE
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, ARAYED NORTH P.O.,
ALAPPUZHA DISTRICT, PIN-682304
13. JESSY MOL VARGHESE
D/O.V.T.JOSEPH, VIKRAMATH HOUSE, ARAYED NORTH P.O.,
ALAPPUZHA DISTRICT, PIN-682304

R1 BY ADV. SRI.K.A.SHAJI MATHEW
R1 BY ADV. SRI.LEGITH T.KOTTAKKAL

THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION ON
06-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

Ex.S.A. No.3 of 2015

Dated this the 6th day of February, 2015

JUDGMENT

Defeated appellants in A.S.No.116 of 2011 before the Additional District Court, Ernakulam are the appellants herein. The contesting respondent in this proceeding is the auction purchaser, who purchased the property involved in O.S.No.280 of 2001 before the Principal Munsiff Court, Ernakulam, a suit for partition. The court after finding that the property could not be partitioned because of the special features, put it up for auction and the contesting respondent purchased the property in auction. When he approached the executing court with E.P.No.57 of 2010, the appellants filed E.A.No.170 of 2010 resisting the delivery of property. It is their contention that on 15.06.1990 they took the building on oral lease from deceased Vavachan, predecessor-in-interest of the parties in O.S.No.280 of 2001, on payment of Rupees two lakhs. Said Vavachan permitted the appellants to occupy the building as tenants. Appellants raised a contention that as they were not parties to O.S.No.280 of 2001, they are not bound by the decree in the suit and they could not be evicted in the execution proceedings.

2. Executing court after hearing both sides repelled the

contentions raised by the appellants on 06.07.2011 and decided to proceed with execution. Thereafter on 15.07.2011 the executing court passed an order, which reads as follows:

“Heard the Decree Holder as well as petitioner in EA 170/10. The independent claim put forward by the petitioner in EA 170/10 stands rejected. Their possession is only under the Judgment Debtors and hence they cannot claim any independent right. They are bound by the decree and liable to surrender possession to the petitioner. That means, petitioner is entitled to get actual, physical delivery and not mere symbolic delivery.”

Then on 03.08.2011, the appellants approached the executing court with E.A.No.349 of 2011 requesting the court to adjourn the date of delivery to another date, which was posted to 04.08.2011. As requested by the appellants, the delivery was adjourned to 11.08.2011. In the meantime, they filed O.P.(C) No.2553 of 2011 before this Court challenging the order passed by the executing court in E.A.No.170 of 2010, which was the subject matter of the appeal before the lower appellate court. After elaborate consideration, this Court negated the claim raised by the appellants in toto. It was noticed that their claim is inconsistent. At one breath, they contended that they are tenants under Vavachan and at another moment, they would say that they are licensees. The court below

also took note of the inconsistent claims and found that the case of debtor-creditor relationship between Vavachan and the appellants could not be accepted. The inconsistent pleas raised were considered in detail by the learned Judge of this Court in O.P.(C) No.2553 of 2011 and found that petitioners' (appellants) contention against actual delivery cannot be sustained. It is submitted by the learned counsel for the contesting respondent that the fact of filing and dismissal at the threshold of O.P.(C) No.2553 of 2011 was suppressed before the lower appellate court. Learned Additional District Judge considered the rival contentions and found that the claim of the appellants is not sustainable in law.

After hearing both sides and on perusing the judgment passed by this Court in O.P.(C) No.2553 of 2011, I am of the definite view that the contentions raised by the appellants cannot stand a legal scrutiny. Therefore, I find that the appeal is devoid of any merit. It is dismissed.

All pending interlocutory applications will stand dismissed.

A. HARIPRASAD, JUDGE.

cks