

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

Ex.SA.No. 13 of 2015 ()

AGAINST THE JUDGMENT IN AS 10/2014 of ADDL.DISTRICT COURT -I,KOTTAYAM
DATED 21-03-2015.

AGAINST THE ORDER IN E.A NO.581/2012 IN E.P NO 227/2002 IN O.SNO.284/1989 of
ADDL.SUB COURT, KOTTAYAM DATED 10-12-2013.

APPELLANT/APPELLANT/PETITIONER :

KUNJAMMA, AGED 73 YEARS,
D/O. MYLAN, THAKADIPURAYIDATHIL HOUSE,
PALICKACHIRA P.O. , PAIPPADU KARA,
THRIKODITHANAM VILLAGE,
CHANGANASSERY TALUK.

BY ADVS.SRI.S.JAYAKRISHNAN.
SRI.S.PARAMESWARA PRASAD.
SRI.T.K.MOHANAN NAIR.

RESPONDENT(S)/RESPONDENTS/RESPONDENTS :

1. MUHAMMED KUNJU NABEEZATH, AGED 57 YEARS,
W/O. MUHAMMED KUNJU, THEKKEKARA HOUSE,
EAST MUTHOOR KARA, THIRUVALLA VILLAGE,
THIRUVALLA - 689 101.
2. MUHAMMEDD KUNJU, AGED 63 YEARS,
THEKKEKARA HOUSE, EAST MUTHOOR KARA,
THIRUVALLA VILLAGE, THIRUVALLA - 689 101.
3. KUNJAPPAN GOPI, AGED 70 YEARS,
S/O KUNJAPPAN, THAKIDIPPURATHU HOUSE,
PALICKACHIRA POST, PAIPPADU KARA,
THRIKODITHANAM VILLAGE, CHANGANASSERY TALUK - 686 105.

R1 & R2 BY ADVS. SRI.K.MOHANAKANNAN.
SMT.A.R.PRAVITHA.
SMT.THUSHARA.P.S.

THIS EXECUTION SECOND APPEAL HAVING COME UP FOR ADMISSION ON
20-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.HARIPRASAD, J.

Ex. S.A No.13 of 2015

Dated this the 20th day of July, 2015.

J U D G M E N T

Appellant is not a party in O.S No.284/1989 on the file of the Additional Subordinate Judge's Court, Kottayam. The suit was one for specific performance of a contract. The suit was decreed. As the defendant failed to execute the document in terms of the decree, the court executed a document in favour of the first respondent and now the E.P is posted for delivery of the property. At that time, the appellant approached the executing court with a claim petition under Order XXI Rule 58 C.P.C claiming that she is a co-owner in respect of the property covered by the decree. It is further contended by her that the decree cannot be executed without adjudicating her rights. The court below after considering the contention raised by the appellant dismissed her petition. Against that order, an appeal was preferred before the lower appellate court. Lower appellate court also turned down the contention of the appellant.

2. Heard the learned counsel for the appellant and the contesting respondent (plaintiff/decree holder).

3. On going through the impugned orders and after hearing the learned counsel for the appellant, it can be understood that the case put forward by the appellant is one of co-ownership with the vendor of the property, viz; the third respondent. It is also seen that the appellant has preferred another suit as O.S No.54/2012 before the Munsiff's Court, Changanacherry for setting aside the partition deed and for declaration of her 1/9th share over the property. It is abundantly clear that the decree now sought to be executed is only against the third respondent. If the appellant is able to establish that the third respondent has only a partial right over the property, she may succeed in the suit. If that be so, the decree can be said to be one for specific performance of a contract in respect of a co-owner's share interest in the property. By no stretch of reasoning, it can be said that the execution of the decree will

cause prejudice to the appellant as she is not bound by the decree. The decree holder (first respondent) is said to be a bonafide purchaser for value and that contention has been upheld by the court below. The dismissal of the petition under Order XXI Rule 58 C.P.C by the courts below will cause no prejudice to the rights of the appellant, if she establishes in the pending suit that she is a co-owner in respect of the property. Then her remedy lies elsewhere. The dismissal of the petition filed by the appellant is perfectly legal and I do not find any substantial question of law arising in this matter. Without prejudice to the rights of the appellant, the appeal is dismissed. The court below shall conclude the execution of the decree in accordance with law as expeditiously as possible.

All pending interlocutory applications will stand dismissed.

**Sd/-
A.HARIPRASAD,
JUDGE.**