

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH**

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

FAO.No. 95 of 2015 ()

**AGAINST THE ORDER IN I.A.NO.405/2015 IN O.S.NO.17/2015 OF SUBORDINATE JUDGE'S
COURT, PATHANAMTHITTA DATED 10.4.2015**

APPELLANT/COUNTER PETITIONER-PLAINTIFF:

**JAYA SREELAL, AGED 37 YEARS
W/O.K.SREELAL, RESIDING AT MIDHUNAM, ENADU MURI
MALAYALAPUZHA VILLAGE, KONNY TALUK.**

**BY ADVS.SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR**

RESPONDENTS/PETITIONERS-DEFENDANTS:

**1. M.C.GEORGE, AGED 60 YEARS
S/O.JOSEPH CHACKO, RESIDING AT MULLENKUCHIYIL HOUSE
AIMANAM.P.O., AIMANAM VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT. 686 015.**

**2. MAMATHA GEORGE, AGED 54 YEARS
W/O.M.C.GEORGE, RESIDING AT MULLENKUZHIYIL HOUSE
AIMANAM.P.O., AIMANAM VILLAGE, KOTTAYAM TALUK
KOTTAYAM DISTRICT. 686 015.**

**R. BY ADV. SRI.JACOB PALEX (CAVEATOR)
R1 & R2 BY ADVS. SRI.JACOB PALEX
SRI.JOSEPH PALEX**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
17-06-2015, ALONG WITH FAO. 100/2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

shg/

T.R. RAMACHANDRAN NAIR & K.P. JYOTHINDRANATH, JJ.

F.A.O.Nos.95 & 100 of 2015

Dated this the 17th day of June, 2015

J U D G M E N T

Ramachandran Nair, J.

These two appeals have been filed by the plaintiff in O.S.No.17/2015 on the file of the Sub Court, Pathanamthitta. FAO No.95/2015 is from the order in I.A.No.405/2015 and FAO No.100/2015 is from the order in I.A.No.282/2015.

2. The suit was filed by the appellants seeking a decree for money to the tune of Rs.41,14,162/- including interest. I.A.No.282/2015 was filed seeking attachment of certain items of properties belonging to the defendants in the suit.

3. Two items of properties have been attached going by the averments in paragraph 3 of the appeal memorandum as per the order in I.A.282/2015. It is the case of the appellants that the defendants did not choose to show cause as to why attachment shall not be made

absolute but filed two interlocutory applications as I.A.No.403/2015 (seeking to advance the case for an early hearing) and I.A.No.405/2015 (seeking to lift the attachment in respect of item No.1 property). Orders have been passed separately, by which I.A.405/2015 stands allowed by lifting the attachment of Schedule I and another order is passed in I.A.282/2015 retaining attachment as regards item II property.

4. The main plea raised by the learned counsel for the appellants is that the court should not have bypassed the procedure under Rule 6 of Order 38. It is also highlighted that going by the value of the properties attached, the remaining item on which the attachment is continuing now may not constitute sufficient security.

5. Learned counsel for the respondents submitted that both the items of the properties attached are very valuable. It is submitted that the suit valuation is around Rs.41 lakhs including interest whereas on a reasonable assessment of the value of the attached items it can be seen

that the value will be more than Rs.60 lakhs for the item II property. In the above circumstance an application was filed to lift the attachment. It is submitted that the plaintiffs by seeking attachment of both the items was only trying to cause hardship to them in carrying out the developments of schedule item I property in question.

6. It is also submitted by the learned counsel for the respondents that the court was pleased to allow the application as there was no serious objection.

7. Evidently the court has acted under Order 38 Rule 5 in passing a conditional order of attachment. The defendants going by Rule 6 will have to show cause also. In fact Rule 6 enable the court to withdraw the attachment also in certain circumstances.

8. Even though the learned counsel for the respondents submitted that the applications filed could also be treated as showing cause under Rule 6, we are of the view that it was a separate petition itself filed by the respondents to lift the attachment. We are not going into

the merits now.

9. In a matter like this, the court will have to satisfy itself as to the extent of property required so as to continue the order of attachment as evident from Rule 6(1) of Order 38. Of course the respondents have not filed the written statement. But at this stage since the only issue to be considered is with regard to the sufficiency of the property which is the dispute now raised here in this appeal, it is open to the defendants to satisfy the court by inviting the attention of the court to any relevant materials with regard to the approximate market value of the property. This can be by any appropriate methods even by taking out a commission also.

10. According to us, since the orders impugned herein do not deal with these aspects, the matter will be reconsidered by the court below with an opportunity to both sides. Accordingly, the appeals are allowed and the impugned orders are set aside. The matter will be reconsidered by the court and appropriate orders shall be

passed, after affording an opportunity to both sides for hearing and fresh steps will be taken in the matter as expeditiously as possible.

11. Along with I.A.No.498/2005 the respondents have produced a document before this Court as Annexure R1 (a). Since we are allowing the respondents to adduce evidence before the court below, we permit the learned counsel for the respondents to receive back the same and the registry is directed to return back it.

Appeals are allowed as above and there will be no order as to costs.

Sd/-
T.R. RAMACHANDRAN NAIR
JUDGE

Sd/-
K.P. JYOTHINDRANATH
JUDGE

//True copy//

P.A. TO JUDGE

shg/