

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

TUESDAY, THE 30TH DAY OF JUNE 2015/9TH ASHADHA, 1937

FAO.No. 131 of 2015 ()

I.A.NO.1068/14 IN O.S.167/2013 OF THE SUB COURT, PALA DATED 08.12.2014

APPELLANT IN FAO -PETITIONER IN I.A./PLAINTIFF IN SUIT:

MUHAMMED IQBAL
S/O HASSANKUTTY, PANTHUVELI HOUSE, ENTHAYAR PO
ENTHAYAR KARA KOOTTICKAL VILLAGE

BY ADVS.SRI.MATHEWS K.PHILIP
SMT.T.MANASY

RESPONDENTS IN FAO/RESPONDENTS IN IA AND DEFENDANTS IN SIT:

1. JAMES VARGHESE
S/O VARGHESE, ASARIYETHU HOUSE, ELAMKAD PO
ELAMKAD KARA, KOOTTICKAL VILLAGE 686 514

2. ELIZABETH JAMES
W/O. JAMES VARGHESE, ASARIYETHU HOUSE, ELAMKAD PO
ELAMKAD KARA, KOOTTICKAL VILLAGE 686 514

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 30-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.131 of 2015

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Dated this the 30th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

We have heard the learned counsel for the appellant challenging the dismissal of an application under Rule 2A of Order XXXIX of C.P.C.

2. Contemporaneous with the suit, the appellant obtained an order of temporary injunction against alienating or encumbering a particular item of property. Ultimately, the suit was decreed. During the pendency of the suit, appellant/plaintiff invoked Order XXXIX Rule 2A of the C.P.C alleging that the restraint order was violated inasmuch as an encumbrance was created by the defendants in favour of the Mundakayam Service Co-operative Bank.

3. Though the suit was decreed, the application to take action for alleged violation of injunction was dismissed. To do so, the trial court relied on material evidence to hold that the property was already outstanding in the mortgage in favour of that lending institution and all that was done was that the existing loan

transaction was renewed. Even if the loan was not renewed, quality of the charge that was already created would continue. There was no further encumbrance created afresh. We do not see that the court below was wrong in having held that no situation for prosecution under Order XXXIX Rule 2A arises. The appeal does not merit acceptance. The impugned order stands.

In the result, this appeal is dismissed in limine.

Sd/-

THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

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