

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.V. ASHA

FRIDAY, THE 27TH DAY OF NOVEMBER 2015/6TH AGRAHAYANA, 1937

FAO.No. 143 of 2015 ()

ORDER DTD.26.6.2015 IN IA.260/15 IN OS.5/15 OF THE SUB COURT,
KARUNAGAPPALLY

APPELLANT(S)/DEFENDANT:

SALEENA BEEVI @ SALEENA
D/O. ABDUL MUTHALIF, MALLAYIL VEEDU
VADAKKUMTHALA KIZHAKKUM MURI, VADAKKUMTHALA VILLAGE
KARUNAGAPPALLY

BY ADV. SRI.B.KRISHNA MANI

RESPONDENT(S)/PLAINTIFF:

SUMA PHILIP
W/O. PHILIPPOSE, NADANYA, VADAKKUMTHALA KIZHAKKUM MURI,
VADAKKUMTHALA VILLAGE,
KARUNAGAPPALLY.

R-R BY ADV. SRI.ASP.KURUP
R-R BY ADV. SRI.SADCHITH.P.KURUP

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
27-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.143 of 2015

Dated this the 27th day of November, 2015

JUDGMENT

Antony Dominic, J.

1. This appeal arises from the order passed by the Sub Court, Karunagappally in I.A.260/15 in O.S.5/15 filed by the respondent plaintiff for an order under Order XXXVIII Rule 5 of the Code of Civil Procedure. By the said IA, the respondent plaintiff sought attachment before judgment of 4 items of properties. By the impugned order, the court below directed the appellant to furnish sufficient security for the plaint claim or ₹36,60,000/- or to show cause for not furnishing such security and ordered that till then, the aforesaid three items of properties would be attached. It is this order which is under challenge.

2. Respondent plaintiff filed the suit for recovery of ₹36,60,000/-. It was along with the said suit that the plaintiff filed I.A.260/15 seeking attachment of 4 items of properties.

3. Reading of the order shows that the court took note of the plaint claim and the fair value of the properties and found the value of the properties to be much less than the plaint claim. It also took note of the submission of the learned counsel for the respondent that attachment of item Nos.1, 2 and 4 would be sufficient and it was on that basis that omitting item No.3, the remaining items of properties were attached.

4. In this appeal, counsel for the appellant contended that item No.1 has a residential building and that the said property is already mortgaged to a bank for availing of a business loan. It is also stated that item No.3 is having an extent of 37.67 ares and is having a minimum market value of about ₹1 lakh per cent. According to the learned counsel, attachment of this property alone would have been sufficient. It is also stated that there is no justification for attaching item No.4 which is 2/27th right of the appellant over the property scheduled as item No.4.

5.If, as stated by the learned counsel, attachment of item No.3 which has been omitted by the court below alone was sufficient to safeguard the interest of the plaintiff, we see no reason why the other items of properties have been attached. However, this contention could be accepted only if there are acceptable evidence to show that item No.3 property is worth the price as claimed by the appellant or at least, is sufficient to satisfy the plaint claim. In the absence of such materials before this Court, we feel the proper course to be adopted is to give an opportunity to the appellant to move the trial court itself for variation of the impugned order, producing materials and contending that item No.3 property is sufficient to safeguard the interest of the plaintiff and that attachment over the other items of properties are to be released. It is therefore ordered that if such an application is filed, the court below shall consider the same in accordance with law and with notice to the respondent and pass

orders thereon at any rate within four weeks thereafter.

Appeal is disposed of as above.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge