

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. 188 of 2015 ()

AGAINST ORDER DT.22.08.2015 IN I.A.NO.3335/2015 IN
O.S.NO.30/2015 ON THE FILE OF II ADDITIONAL SUB JUDGE, THRISSUR

APPELLANT/RESPONDENT/PLAINTIFF:

JOHNSON, AGED 44 YEARS
S/O.THALAKOTTOOR LAZAR,
PAVARATTY DESOM & VILLAGE,
CHAVAKKAD TALUK.

BY ADVS.SRI.SANTHEEP ANKARATH
SRI.ARUN MATHEW VADAKKAN

RESPONDENT/PETITIONER/DEFENDANT:

SHAJU N.C, AGED 44 YEARS
S/O.KOCHAPPAN, NEELANKAVIL HOUSE, P.O.WEST BAZAR
OLLUR, WEST BAZAR (PALLINADA), CHAVAKKAD TALUK
THRISSUR - 680 618.

R1 BY ADV. SRI.RAJIT

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.188 of 2015

Dated this the 27th day of November, 2015

JUDGMENT

Antony Dominic, J.

This appeal is filed by the plaintiff in O.S No.30 of 2015 on the file of the II Additional Sub Court, Thrissur, challenging the order passed by that court in I.A No.3335 of 2015.

2. We heard the learned counsel for the appellant and the learned counsel appearing for the respondent. O.S No.30 of 2015 was filed by the appellant for recovery of Rs.33,66,000/-, plus interest from the respondent/defendant. Along with the plaint, the appellant filed I.A No.704 of 2015 and obtained attachment of 3 items of properties. Subsequently, I.A No.3335 of 2015 was filed by the respondent/defendant for lifting the order of attachment with respect to item Nos.1 and 2. By the order impugned, the court below allowed the I.A and it is this order, which is under challenge.

3. On facts, we find that among the 3 items of properties that were attached, item No.1 is having an extent of 1.62 Are and the extent of item No.2 is 0.71 Are. According to the respondent,

these two properties are owned by him in co-ownership with his wife and are also mortgaged to the Punjab National Bank, which has initiated proceedings against the mortgaged properties for recovery of their dues. It was in such circumstances, that he applied for lifting the order of attachment on these properties, so that the same could be sold for liquidating the liability due to the bank. He also contended that the third item of property, having an extent of 5.82 Ares with a building therein, is valuable enough to satisfy the plaint claim. It was these contentions, which were accepted by the court below.

4. We heard the learned counsel on both sides. Considering the submissions made before us, we are also inclined to think that, if as stated by the respondent, item Nos.1 and 2 are owned by the respondent in co-ownership with his wife and the properties are mortgaged to the bank, and against which recovery proceedings are already initiated by the bank, the Court cannot be faulted for lifting the order of attachment, so that he could dispose of the property and liquidate the liability due to the bank. It is also his case that, excess amount, if any, that would be received on sale of the property, could be made

available to the court below.

5. However, the apprehension of the appellant is that the property would be sold in a private sale and that the excess amount if any, that would be received, the details of which will be unknown to anybody else, would be appropriated by the respondent/defendant. We do find justification in that apprehension and according to us, this apprehension can be set at rest, if sufficient safeguards are provided to take care of the interest of the appellant.

6. Keeping in mind the above apprehension of the appellant, we direct that, although the order lifting the attachment of items 1 and 2 is not liable to be varied in this appeal, still, before the respondent concludes the sale of items 1 and 2 mentioned in the impugned order, he will make an application before the court below declaring the price at which the property is agreed to be sold fixed along with the details regarding the dues to the bank, and will sell the property only with the approval of the court below. It is also made clear that, if the appellant has a case that the price declared by the respondent is low, he will be entitled to make a suitable offer for

the property. It is also ordered that the excess amount, if any, after satisfying the debts, if any, due to the bank, will be deposited in the court below by the respondent. Subject to these safeguards, the order impugned is confirmed.

The appeal is disposed of accordingly.

Sd/-
ANTONY DOMINIC
Judge

Sd/-
P.VASHA
Judge

rtr/

/true copy/

P.S to Judge