

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC

&

THE HONOURABLE SMT. JUSTICE P.V.ASHA

TUESDAY, THE 22ND DAY OF DECEMBER 2015/1ST POUSHA, 1937

FAO.No. 269 of 2015 ()

AGAINST THE ORDER IN I.A.NO.845/2015 IN O.S.NO.37/2015 OF
PRINCIPAL SUB COURT, THALASSERY, DATED 12.8.2015

APPELLANT(S)/PETITIONER/PLAINTIFF:

PUTHIYA PURAYIL KASIM HAJI,
S/O.MOOSA,
FAZEELA MANZIL,
P O NEERVELI,
KANNUR DISTRICT.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENT(S)/RESPONDENT/DEFENDANT NO.1:

KACHIPRAVAN SHAMEER
S/O.KADER,
SAAJITHA MANZIL,
P O SIVAPURAM,
KANNUR DISTRICT.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION
ON 22-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

**ANTONY DOMINIC, J. &
P.V.ASHA, J.**

F.A.O.No.269 of 2015

Dated this the 22nd day of December, 2015.

J U D G M E N T

Antony Dominic, J.

Heard the learned counsel for the appellant.

2. This appeal is filed against the order passed by the Principal Sub Court, Thalasseri, rejecting I.A.No.845/15 in O.S.No.37/15. The said interlocutory application was filed under Order XXXVIII Rule 5 of CPC seeking attachment of the property mentioned therein. The suit in question was filed by the appellant for refund of an amount of Rs.25 lakhs from the defendants. According to the plaintiff, the 2nd defendant executed a sale deed in his favour which was later found to be a fraudulent one. It is on that basis, the suit has been filed. In such suit, the I.A. in question was filed seeking attachment of the property of the 1st defendant. A reading of the order would show that the court below found that as the vendor of the property of the

appellant being the 2nd defendant, the relief in the I.A. could not have been sought against the 1st defendant who alone was made as a party to the I.A. Although it is the case of the plaintiff that it was at the instance of the 1st defendant, the sale deed in question was executed by the 2nd defendant who is described to be the binami of the 1st defendant, since the document in favour of the appellant was executed only by the 2nd defendant, we are inclined to think that the court below was perfectly justified in concluding that the appellant could not have sought an order of attachment of the property of the 1st defendant. We see no reason to interfere with the said findings. Needless to say that the observations made in this order are only for the purpose of disposal of this appeal and shall not in any manner affect the final disposal of the suit or the order in any other application which may be filed by the appellant/plaintiff.

With the above observations, this appeal is dismissed.

Sd/-
ANTONY DOMINIC,
JUDGE.

Sd/-
P.V.ASHA,
JUDGE.

ami/

//True copy//

P.A. to Judge