

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 4TH DAY OF JUNE 2015/14TH JYAISHTA, 1937

FAO.No. 219 of 2013 ()

(AGAINST ORDER DATED 10.04.2013 IN E.A.NO.1047/2011 IN
E.P.NO.46 OF 2002 IN O.S.NO.61 OF 1999 ON THE FILE OF THE
COURT OF SUBORDINATE JUDGE, KOZHIKODE)

APPELLANT(S)/PETITIONERS/LEGAL HEIRS OF JUDGMENT DEBTOR:

1. SHYMA PUSHPANATH AGED 54 YEARS
W/O. PUSHPANATH, PALATHPARAMBA VEEDU
DHANALAKSHMI NILAYAM, KUTHIRAVATTOM P.O.
KOTTOOLI AMSOM, KOZHIKODE.
2. DHANESHKUMAR AGED 29 YEARS
S/O. PUSHPANATH, PALATHPARAMBA VEEDU
DHANALAKSHMI NILAYAM, KUTHIRAVATTOM P.O.
KOTTOOLI AMSOM, KOZHIKODE.
3. VYSHAG KARUN AGED 24 YEARS
S/O. PUSHPANATH, PALATHPARAMBA VEEDU
DHANALAKSHMI NILAYAM, KUTHIRAVATTOM P.O.
KOTTOOLI AMSOM, KOZHIKODE.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENT(S)/RESPONDENTS:

1. P.BHASKARAN NAIR
S/O. VELAYUDHAN NAIR, SUBRABHA,
KACHERI AMSOM DESOM
KOZHIKODE, PIN - 673 005.
2. P.V.NIDHEESH, 44 YEARS,
S/O. P.V.SAMI, KERALA KALA, AZHCHAVATTOM
VALAYANAD AMSOM DESOM, KOZHIKODE - 673 007.

R2 BY ADV. SRI.B.G.BHASKAR
R2 BY ADV. SRI.BIJU ABRAHAM
R1 BY ADV. SRI.P.K.RAMKUMAR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY
HEARD ON 04-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

.....
FAO No.219 of 2013
.....

Dated this the 4th day of June, 2015.

J U D G M E N T

Thottathil B.Radhakrishnan, J.

1.Heard.

2.This appeal is by the legal representatives of the judgment debtor. They filed an application before the court below seeking to set aside a sale in the course of execution of the decree for recovery of money. That application under Order XXI Rule 90 of the Code of Civil Procedure was barred by limitation.

3.The learned counsel for the appellants, finding it impossible to sustain the appeal on ground referable to any error of jurisdiction having been committed by the court below in dismissing the application on ground of delay, argued that the total worth of the land put in auction is manifold more than the decree debt. But the fact of the matter remains that the application to set aside the

sale was filed 20 months after the sale, that is, with a delay of 1½ years.

4. We also see that mediation proceedings failed between parties.

The third party auction purchaser is not agreeable to have a settlement of the matter.

5. Having bestowed our anxious consideration to the contentions raised, we do not find any ground to set aside the impugned order. The appeal fails.

In the result, the appeal is dismissed.

(THOTTATHIL B. RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)