

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 17TH DAY OF JUNE 2015/27TH JYAISHTA, 1937

FAO.No. 329 of 2013 ()

(AGAINST THE ORDER PASSED BY THE SUB COURT, KASARAGODE DATED 10/9/2013
IN E.A. NO.25/2013 IN E.P. NO.9/2010 IN ARC NO.592/2004)

APPELLANT(S)/PETITIONER/JUDGMENT DEBTOR:

B. RAJENDRA PRASAD, AGED 56 YEARS,
S/O. SREENIVASA BHAT, BALEKKALA, KUMBDAJE VILLAGE,
KASARGODE TALUK, MOVVAR.P.O., KASARGODE TALUK.

BY ADVS.SRI.V.V.ASOKAN
SRI.P.P.RAMACHANDRAN

RESPONDENT(S)/DECREE HOLDER:

THE SECRETARY, KUMBDAJE SERVICE CO-OPERATIVE BANK
KUMBADJE AT MOVVAR, MOVVAR POST, KASARGODFE-671543.

R1 BY ADV. SRI.MILLU DANDAPANI

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
17-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No. 329 of 2013

Dated this the 17th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

The judgment debtor is the appellant. He challenges the dismissal of an application under Order XXI Rule 90 of Code of Civil Procedure. The respondent/decreed holder is a Co-operative Society. The arbitration award was put in execution as it is a deemed decree for the purpose of execution. The amount claimed in the execution petition was Rs.2,88,863/-. Four items of properties having a total extent of 1.71 acres were sold for Rs.4,00,100/-.

2. Heard the learned counsel for the appellant and the learned counsel for the respondent.

3. Technically, the court below has taken the view that the proclamation was not properly objected and the revised proclamation was also placed by the decree holder. Be that as it may, it is the undisputed fact that the property has been knocked down at sale for a price much higher than the probable decree

accruals.

4. Under the aforesaid circumstances and taking into consideration the fact that the lending was in co-operative sector, we are of the view that, notwithstanding the grounds raised by the appellant, the sale ought to be set aside if the appellant pays the whole decree amount which is due. The respondent Co-operative Society would always be interested only in generating funds that would come out rather than clinging on the title to the property.

5. Taking into consideration all the relevant facts and circumstances, it is ordered that if the appellant deposits with the decree holder/respondent, an amount of Rs.2,00,000/- (Rupees two lakhs only) within a period of one month from today and pays the remaining amounts at the rate of Rs.35,000/-(Rupees thirty five thousand only) per month payable on or before the last working day of every month commencing from August, 2015 and thereby wipes off the entire outstanding in terms of the decree and costs suffered by the decree holder, the impugned sale would stand set aside. If there is failure to make any of the payments aforesaid, the benefit of this judgment will stand recalled automatically.

We also clarify that the transaction being in the Co-operative sector, any request of the appellant for waiver of any portion of the total accruals by way of interest or otherwise, would be

FAO No.329/2013

sympathetically considered by the respondent and the last payment would be so scheduled accordingly.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.