

IN THE HIGH COURT OF KERALAAT ERNAKULAM

PRESENT:

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

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

FAO.No. 334 of 2013 ()

ORDER DTD.6.7.2013 IN EA.79/13 IN EP.3/12 IN OS.117/08 OF
SUB COURT, NEDUMANGAD

APPELLANT(S)/PETITIONER/JUDGMENT DEBTOR/DEFENDANT:

HABEEB MUHAMMED,
S/O.MUHAMMED KASIM, NOORUNNIYA MANZIL, PANDAKASALA
MARKET ROAD, KATTAKADA, KULATHUMMAL
NEYYATTINKARA

BY ADVS.SRI.R.T.PRADEEP
SRI.P.BIJIMON

RESPONDENT(S)/RESPONDENT/DECREE HOLDER/PLAINTIFF:

SUNIL KUMAR
S/O.SASI, ANIL BHAVAN, PULIYOORKONAM
KATTAKADA, THIRUVANTHAPURAM 695 121.

R1 BY ADV. SRI.G.SUDHEER

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC & P.V.ASHA, JJ.

F.A.O.No.334 of 2013

Dated this the 4th day of December, 2015

JUDGMENT

Antony Dominic, J.

This appeal arises from the order passed by the Sub Court, Nedumangad dismissing E.A.79/13 in E.P.3/12 in O.S.117/08. Appellant, the judgment debtor, filed E.A.79/13 under Order XXI Rule 90 seeking to set aside the sale conducted in execution of the decree passed in O.S.117/08. The impugned order shows that the only ground urged by the appellant was that the price fixed in the auction was a meagre one as compared to the fair value fixed by the Government. First of all, inadequacy of the price itself cannot be a reason for setting aside the sale, unless the sale is vitiated by material irregularity causing substantial injury to the parties. Secondly, as is evident from the order itself, in response to the Rule 66 notice, the judgment debtor had filed his objections and it was after hearing the parties, the proclamation of sale was settled. In such a situation, once the sale is conducted, it is not open to the judgment debtor to

seek its setting aside on the ground that the price is inadequate. We see no reason to interfere with the impugned order.

Appeal fails and is accordingly dismissed.

Sd/-
ANTONY DOMINIC, Judge.

Sd/-
P.V.ASHA, Judge.

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PS to Judge