

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

THURSDAY, THE 2ND DAY OF JULY 2015/11TH ASHADHA, 1937

Ex.FA.No. 53 of 2014

**ORDER DTD.18.11.2014 IN EA.978/2014 IN EP.87/2014 IN OS 45/1992 OF PRINCIPAL SUB
COURT, IRINJALAKUDA**
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APPELLANT(S)/PETITIONER/3RD PARTY:

**ANIRUDHAN, AGED 57 YEARS,
S/O.MARATH KITTAPPAYI, EDATHIRUTHY VILLAGE & DESOM,
KODUNGALLUR TALUK.**

BY ADV. SRI.K.S.BHARATHAN

RESPONDENT(S)/DECREE HOLDER & JUDGMENT DEBTORS 1 & 2:

- 1. SIDHARTHAN, AGED 75 YEARS,
S/O.CHAKKARATH MANIKYAN, PERUMBADAPPU DESOM,
CHENTHRAPPINNI VILLAGE, KODUNGALLUR TALUK.**
- 2. RAJAN, AGED 70 YEARS,
S/O.CHAKKARATH MANIKYAN, PERUMBADAPPU DESOM,
CHENTHRAPPINNI VILLAGE, KODUNGALLUR TALUK.**
- 3. SAROJINI, AGED 70 YEARS,
W/O.MALATH VELAPPAN, PERUMBADAPPU DESOM
CHENTRAPPINNI VILLAGE & DESOM,, KODUNGALLUR TALUK.**

R1 BY ADV. SRI.G.SREEKUMAR (CHELUR)

R2 BY ADV. SRI.C.JOSEPH JOHNY

**THIS EXECUTION FIRST APPEAL HAVING BEEN FINALLY HEARD ON
02-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

P.B.SURESH KUMAR, J.

Ex.F.A. No.53 of 2014

Dated this the 2nd day of July , 2015

JUDGMENT

Heard the learned counsel for the appellant as also the learned counsel for the first respondent. The copies of the relevant documents which were made available to me have been perused.

2. The petitioner in an application under Order XXI Rule 99 of the Code of Civil Procedure ('the Code' for short) has come up in this appeal, challenging the decision in the said application.

3. O.S.No.45 of 1992 on the file of the Principal Sub Court, Irinjalakkuda was a suit filed by the first respondent against the second respondent for recovery of

possession of the plaint schedule property therein with mesne profits. The suit was decreed on 31.1.2000 and the decision of the trial court has become final. Thereupon, the first respondent initiated proceedings for execution of the decree. In the execution proceedings, when the property was about to be delivered over to the first respondent, the appellant preferred an application invoking Order XXI Rule 99 of the Code, alleging that he has independent title over the plaint schedule property in the suit. To substantiate the case set up in the application, the appellant relied on the sale deed obtained by him in respect of the plaint schedule property on 12.7.2001. According to the appellant, the plaint schedule property was sold to him by one Surendran, who obtained the property from the first respondent. When the application filed by the appellant was taken up for hearing, it was however conceded that the title deed of the appellant viz., document No.1472 of 2001 dated 12.7.2001 and the title deed of his predecessor viz., document No.27

of 1999 were challenged by the first respondent in O.S No.193 of 2009 before the Munsiff Court, Kodungalloor and the said suit was decreed holding that the said documents are void and not binding on the plaint schedule property in O.S.No.45 of 1992. In the said circumstances, the application filed by the appellant was dismissed by the court below as per the order impugned in this appeal. The appellant is aggrieved by said decision of the court below.

4. The learned counsel for the appellant submitted that the decision in O.S.No.193 of 2009 has been challenged by the appellant before the Sub Court, Irinjalakkuda in A.S.No.86 of 2014 and as such, the execution court ought not have rejected the application filed by him.

5. I do not agree with the submission made by the learned counsel for the appellant. The application under Order XXI Rule 99 of the Code was filed by the appellant relying on the sale deed obtained by him in respect of the

property bearing No.1472 of 2001 dated 12.7.2001. The said document was found to be void and not binding upon the plaint schedule property by the competent civil court. Even though it is claimed by the appellant that an appeal has been preferred against the decision in the said suit, he could not secure any interim order. In the said circumstances, the impugned decision of the court below rejecting the application of the appellant under Order XXI, Rule 99 of the Code is in order. There is no merit in the appeal and the same is, accordingly, dismissed.

P.B.SURESH KUMAR, JUDGE.

Smm