

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN

&

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

FAO.No. 8 of 2014 ()

(AGAINST THE ORDER IN E.A.NO.344/2013 IN E.P. NO.96/2011 IN O.S. NO.80/2010 DATED 21/11/2013 OF SUB COURT, HOSDURG, KASARAGOD)

APPELLANT(S)/PETITIONERS/JUDGMENT DEBTORS:

1. ABDUL RAZAK, AGED 30 YEARS,
ANAKKARAN-PUTHIYAPURAYIL, S/O.C.IBRAHIM, KOOLERY
SOUTH TRIKKARIPUR VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT.

2. SUHARA ANAKKARAN-PUTHIYAPURAYIL, AGED 51 YEARS
W/O.C.IBRAHIM, KOOLERY, SOUTH TRIKKARIPUR VILLAGE,
HOSDURG TALUK, KASARAGOD DISTRICT.

BY ADV. SRI.PRAVEEN K. JOY

RESPONDENT(S)/RESPONDENTS/DECREE HOLDER:

1. STATE BANK OF TRAVANCORE,
TRIKARIPUR BRANCH, REP. BY ITS BRANCH MANAGER
TRIKARIPUR, NORTH TRIKKARIPUR VILLAGE, HOSDURG TALUK
KASARAGOD DISTRICT.

2. MUHAMMED SAYYED, AGED 41 YEARS
S/O.KUNNATH AMEER ALI, G.S.HOUSE, PADNE P.O.
PADNE VILLAGE, HOSDURG TALUK, KASARAGOD DISTRICT.

R1 BY ADV. SRI.T.SETHUMADHAVAN (SR.)
R1 BY ADV. SRI.PUSHPARAJAN KODOTH
R1 BY ADV. SRI.K.JAYESH MOHANKUMAR
R1 BY ADV. SMT.VANDANA MENON
R2 BY ADV. SRI.T.K.VIPINDAS
R2 BY ADV. SRI.K.V.SREE VINAYAKAN
R2 BY ADV. SRI.K.M.MUHAMMED HUSSAIN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
26-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

F.A.O. No. 8 of 2014

Dated this the 26th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

This appeal is by the judgment debtors. They filed application under Order XXI Rule 90 CPC challenging the sale of immovable property. That was dismissed. Hence, this appeal.

2. We have heard the learned counsel for the appellants and the contesting respondents. The grounds raised in support of the application under Order XXI Rule 90 were that the sale was effected without proper publication and a copy of proclamation notice was not served on the judgment debtors personally. Further allegation was that the decree holder and the bank authority had colluded and bid the property for price which is very low. According to the judgment debtors, the market value of the property is about rupees three lakhs

per cent and the sale of the entire property is not necessary for satisfying the entire decree debt. It is stated that the judgment debtors are ready to deposit the decree debt.

3. At the time of admission of this appeal, an interlocutory order was passed on 6/1/2014 granting an order of interim stay of delivery proceedings on condition that the appellants deposit Rs.5,00,000/- on or before 23/1/2014 and another amount of Rs.5,00,000/- on or before 20/2/2014 and a further amount of Rs.3,00,000/- on or before 15/3/2014. But, nothing has been paid even now.

4. Submissions of the learned counsel for the decree holder are in relation to the contentions raised before the Executing Court in support of the application under Order XXI Rule 90 CPC. We need to note that no question of material irregularity or illegality was pleaded and established as against the proclamation and conduct of the sale. More importantly, as rightly noted by the court below, the judgment debtors have no case that they suffered substantial injury by reason of the impugned sale.

5. In spite of an opportunity being extended by this

Court, the judgment debtors have not paid off the decree debt.

6. We find no ground to visit the sale warranting interference with the impugned order passed dismissing the application under Order XXI Rule 90 CPC.

In the result, this appeal is dismissed. No costs.

Sd/-

THOTTATHIL B.RADHAKRISHNAN
Judge

Sd/-

SUNIL THOMAS
Judge

dpk

/true copy/ PS to Judge.

