

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN  
&  
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

WEDNESDAY, THE 24TH DAY OF JUNE 2015/3RD ASHADHA, 1937

FAO.No. 192 of 2014 ()

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AGAINST THE ORDER IN E.A.NO.06/2014 IN E.P.197/12 IN OS 12/2011 of SUB  
COURT, KANNUR DATED 12-06-2014

APPELLANT/PETITIONER:

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K.T.JAYAPRAKASH AGED 55 YEARS  
S/O.RAGHAVAN, ASHOKA MANDIRAM, AZHIKODE AMSOM  
P.O.AZHEEKAL, KANNUR.

BY ADVS.SRI.V.R.KESAVA KAIMAL  
SMT.C.S.RAJANI

RESPONDENT/RESPONDENT:

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E.MUKUNDAN AGED 67 YEARS  
S/O.GOPALAN, RESIDING AT MANJULA, MAYYIL AMSOM  
DESOM, MAYYIL P.O., KANNUR-670 602.

BY ADV. SRI.P.U.SHAILAJAN

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 24-06-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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**F.A.O.No.192 of 2014**

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Dated this the 24<sup>th</sup> day of June, 2015

**JUDGMENT**

**Thottathil B. Radhakrishnan, J.**

We have heard the learned counsel for the appellant and the learned counsel for the respondent. The judgment debtor filed an application to set aside the sale which was held on 25.10.2013. The executing court considering the application held against the judgment debtor on different grounds.

2. Though there was no plea raised by the decree holder/auction purchaser, that the application under Order XXI Rule 90 of the C.P.C was barred by limitation and though there is no finding by the court below on such an issue, learned counsel for the contesting respondent (decree holder/auction purchaser) pointed out that going through the records of the case, it is evident that the application filed under Order XXI Rule 90 of the C.P.C is barred by limitation.

3. We have seen the lower court records. We think that ends of justice require that the aforesaid question gains the attention of the executing court at the first instance before the appellate court adjudicates on any such issue. This is more particularly because, there are different modalities and approaches

that could be weighed by the parties to seek relief in accordance with the Code of Civil Procedure. Similarly, certain provisions of the Limitation Act may also be of application for consideration. We think that ends of justice require a de novo consideration of the application by the executing court, including the question as to whether the application is barred by limitation. It does not preclude the appellant (judgment debtor) seeking any alternative or further relief from the executing court.

4. In the result, the impugned order is set aside without expressing anything on the merits of the rival contentions, particularly on the plea of limitation. Resultantly, this matter is remitted for re-consideration of the application leaving open the right of parties to raise all the contentions, including by filing further application as may be found necessary. We clarify that the court below will decide all such matters untrammelled by anything stated in this judgment.

This appeal is ordered accordingly.

Sd/-  
**THOTTATHIL B. RADHAKRISHNAN**  
**Judge**

Sd/-  
**SUNIL THOMAS**  
**Judge**

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P.A to Judge