

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

FRIDAY, THE 19TH DAY OF JUNE 2015/29TH JYAISHTA, 1937

FAO.No. 255 of 2014 ()

AGAINST THE ORDER IN E.A.2065/2012 IN E.P.546/2010 IN OS 1298/2009 of I
ADDL.SUB COURT, THRISSUR DATED 11-12-2012

APPELLANT/DEFENDANT/JUDGMENT DEBTOR/PETITIONER:

SABU.K.J AGED 38
S/O.JOSE, KATTIKKATTUVBEETIL
BEHIND LADY VICTORY CONVENT, CHIYYARAM VILLAGE
THRISSUR TALUK.

BY ADV. SRI.C.A.ANOOP

RESPONDENT/PLAINTIFF/DECREE HOLDER/AUCTION PURCHASER:

P.A.JOHNSON, AGED 53 YEARS
PULIKOTTIL HOUSE, VAKAYIL ROAD, CHIYYARAM DESOM
VILLAGE, THRISSUR TALUK - 680 026.

R1 BY ADV. SRI.E.VIJIN KARTHIK

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
19-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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

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F.A.O.No.255 of 2014

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Dated this the 19th day of June, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

Heard.

2. This appeal is against an order refusing to set aside a sale. The application under Order XXI Rule 90 of the C.P.C. was on the basis of gross undervaluation and inadequacy of sale price. Though technically, it may be justifiable to say that in terms of Order XXI Rule 90(3), such a question ought to have been raised when settling the proclamation, that is not an indefeasible inhibition in as much as Order XXI Rule 64 enjoins that the Court shall ensure that only such of the property as is required to be sold, is sold. Under such circumstances, we are of the view that the application to set aside the sale deserves to be reconsidered. We also record the submissions on both sides that the parties are prepared to settle the matter and to avoid a sale, judgment debtor will pay off the decree holder the amounts outstanding, including by way of installments.

3. In the result, the impugned order is set aside and

E.A.No.2056 of 2012 in E.P.No.546 of 2010 in O.S.No.1298 of 2009 of the Sub Court, Thrissur is remanded to that Court for consideration de novo after giving the parties opportunity to settle the transaction by payment. If that happens, the court below shall set aside the sale. Otherwise the application shall be decided on merits. Parties are directed to mark appearance before the court below on 11.08.2015.

This appeal is ordered accordingly.

Sd/-
THOTTATHIL B. RADHAKRISHNAN
Judge

Sd/-
SUNIL THOMAS
Judge

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