

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 1ST DAY OF JULY 2015/10TH ASHADHA, 1937

FAO.No. 270 of 2014 ()

**FROM ORDER DATED 28.01.2013 OF THE 1ST ADDL.SUB COURT, THRISSUR
IN E.A.NO.1483/10 IN E.P.NO.512/08 IN O.S.NO.627/04**

APPELLANT(S)/PETITIONER/JUDGMENT DEBTOR :

**FRANCIS KALLIATH
S/O.KALLIYATH VEETIL JACOB, MISSION QUARTERS DESOM
THRISSUR.**

BY ADVS.SRI.DILIP J. AKKARA

RESPONDENT(S)/RESPONDENT/DECREE HOLDER :

**KSHEMAVILASAM KURIES COMPANY (P) LTD.,
ROUND SOUTH, THRISSUR-680001.**

**R1 BY ADV. SRI.JIMMY JOHN VELLANIKARAN
ADV. SRI.V.L.THOMAS**

**THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
01-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

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

F.A.O.No.270 of 2014

Dated this the 1st day of July, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

The judgment debtor in a suit for money is the appellant. He challenges an order dismissing an application under Order XXI Rule 90 of the Code of Civil Procedure.

2. The decree holder is the auction purchaser.

3. We have heard the learned counsel for the appellant and the learned counsel for the respondent.

4. The decree is against one defendant. He contended in his application under Order XXI Rule 90 that the property brought to sale belonged to a partnership firm, which included minors as partners. No material was produced in the court below in support of that. The next contention raised was that the price for which the property has been knocked down for sale is too low. The judgment debtor has

no case that he was not served with notice regarding proclamation of the sale. That being so, he was precluded from challenging the sale value of the property on ground of sale notice as well. The technical objection raised regarding the affixture of notice in notice board etc. also did not survive before the court below. On the whole, we do not see that the court below had acted illegally or erroneously in dismissing the application under Order XXI Rule 90 of CPC, particularly when no illegality, irregularity or impropriety in publishing or conducting the sale was brought to the notice of the court below.

5. In the meantime, we may record the submission on behalf of the decree holder and the judgment debtor that even if the sale is confirmed, the issuance of the sale certificate can be deferred and ultimately, the sale can also be set aside by the court below, if the judgment debtor pays off amounts by way of instalments. There was a condition imposed as per interim order dated 23.09.2014 to deposit Rs.2 lakhs. That amount was deposited.

In the result, this appeal is ordered affirming the impugned order, but directing that if the appellant deposits with the

decree holder, amounts at the rate of Rs.1,50,000/- (Rupees One lakh and fifty thousand only) per month, payable on the last working day of every month, commencing from July 2015 and thereby wipes off the entire outstanding, the sale will stand set aside. It can be ordered as set aside by the court below on being satisfied of the decree holder reporting satisfaction of the decree debt. The amount of Rs.2 lakhs already lying in deposit with the Executing Court can be withdrawn by the decree holder and adjusted towards the account. If there is default in depositing any of the instalments in terms of this judgment, the benefit of this judgment will stand automatically recalled and the sale will stand confirmed and further proceedings can go on accordingly. Appeal is ordered accordingly.

**THOTTATHIL B. RADHAKRISHNAN
JUDGE**

**SUNIL THOMAS
JUDGE**

VS