IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

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

FAO.No. 271 of 2010 ( )

E.A.56/2010 IN E.P.151/91 IN OS 97/1990 of SUB COURT, VATAKARA

APPELLANT(PETITIONER/JUDGMENT DEBTOR):

----

1. AANORAMMAL GOVINDAN, S/O.KANARAN,
AGED 65 YEARS, KUNNUMMAL AMSOM, MOKERI DESOM
VATAKARA TALUK, KOZHIKODE DISTRICT (DIED - LRS. IMPLEADED)

SUPPLEMENTAL APPELLANTS 2 TO 5 IMLEADED :

2. SUMATHI A., AGED 62 YEARS, W/O.LATE GOVINDAN,
ANOREMMAL HOUSE, MOKERI P.O.,
KAKKATTIL VIA., KOZHIKODE DISTRICT.

3. PREJITHA A., AGED 44 YEARS,
D/O.LATE GOVINDAN, PEELIYAT HOUSE, KUTTIADY P.O.
KAKKATTIL VIA., KOZHIKODE DISTRICT.

4. PREMJITH A., AGED 42 YEARS,
S/O.LATE GOVINDAN,
ANOREMMAL HOUSE, MOKERI P.O.,
KAKKATTIL VIA., KOZHIKODE DISTRICT.

5. PREMLAL A., AGED 38 YEARS, S/O.LATE GOVINDAN,
ANOREMMAL HOUSE, KUTTIADY P.O.,
KAKKATTIL VIA., KOZHIKODE DISTRICT.
(LRS. OF DECEASED SOLE APPELLANT ARE IMPLEADED AS
SUPPLEMENTAL APPELLANTS 2 TO 5 VIDE ORDER DT. 26.11.2014 IN
I.A.NO.1555/14).

BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.ANJU P.NAIR
SMT.N.DEEPA

<u>FAO.No. 271 of 2010</u>

RESPONDENTS(RESPONDENT/D.H & AUCTION PURCHASER):

---

1. K.K.GOVINDARAJAN, S/O.GOVINDAN,
   R/AT 'RAJASREE', KUNNUMMAL AMSOM AND VATTOLI DESOM
   VATAKARA TALUK.

2. ANEESH, AGED 33 YEARS, S/O.NANU,
   MATTEMAL HOUSE, KUNNUMMAL AMSOM AND VATTOLI DESOM
   VATAKARA TALUK.

R1 BY ADV. SRI.B.KRISHNAN
R1 BY ADV. SRI.R.PARTHASARATHY
R-2 BY ADV. SRI.R.K.MURALEEDHARAN

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

P.B.SURESH KUMAR, J.

F.A.O. No.271 of 2010

Dated 1st July, 2015.

J U D G M E N T

The judgment debtor in a proceedings for execution of a money decree has come up in this appeal challenging the order passed by the execution court in an application to set aside the sale of his property.

2. The first respondent obtained a decree for recovery of a sum of Rs.33,000/- from the appellant in the year 1990. During 1991, the first respondent instituted proceedings to execute the decree. At the time of instituting the proceedings for execution of the decree, the amount due under the decree was Rs.93,579/-. In the execution proceedings, an item of property, measuring 8.34 cents, owned by the appellant was sold to the second respondent on 8.2.2010 for realisation of the decree debt. Thereupon, the appellant filed E.A.No.56 of 2010 seeking orders to set aside the said sale of the property on the ground that the sale is vitiated by material irregularities. The case set up by the appellant in E.A.No.56 of 2010 was that

it was not necessary for the execution court to sell the entire extent of 8.34 cents for the purpose of recovering the decree debt. The application was opposed by the decree holder contending, among others, that the contentions raised in the application were rejected by the execution court earlier at the time of settling the sale proclamation and the attempt of the judgment debtor is only to prolong the execution of the decree. The execution court, on an elaborate consideration of the materials on record, dismissed E.A.No.56 of 2010. The judgment debtor is aggrieved by the said decision of the execution court.

3. It is seen that the judgment debtor had earlier taken up a stand in the execution petition that the decree is not liable to be executed as he is entitled to the benefit of Explanation V to Section 60 of the Code of Civil Procedure. The said contention was negatived by the execution court as per the order dated 28.8.2003. The order dated 28.8.2003 was challenged before this Court by the judgment debtor in C.R.P.No.1758 of 2003. This Court upheld the order of the

execution court and disposed of the Civil Revision Petition, with a direction to the execution court to consider the question as to whether it is necessary to sell the entire extent of property to realise the decree debt. It is also seen that pursuant to the said order of this Court, the execution court appointed an Advocate Commissioner, who conducted a local inspection and filed a report stating that the centage value of the property will be around Rs.15,000/-. The judgment debtor filed objection to the report of the Advocate Commissioner and prayed for setting aside his report. The execution court negatived the objections raised by the judgment debtor against the report of the Advocate Commissioner and ordered sale of the 8.34 cents of property referred to above for realisation of the decree debt. The said order of the execution court was challenged by the judgment debtor before this Court in W.P.(C) No.18838 of 2009. This Court found in the said case that there is no substance in the objections raised by the judgment debtor to the report of the Advocate Commissioner and disposed of the writ petition referred to above with a direction to the execution court to take expeditious steps to bring the 8.34 cents of property for sale for realisation of the decree debt. The property was sold thereafter on 8.2.2010. In the aforesaid circumstances, the judgment debtor is not entitled to raise the contention that the entire extent of property sold by the court was not required to be sold for realisation of the decree debt in the subsequent proceedings.

4. The learned counsel for the appellant contended that there were improvements in the property sold worth Rs.75,000/- and this aspect of the matter was not taken into account while settling the proclamation for sale. There is no substance in this argument also. This is an objection that was available to the judgment debtor at the time of settlement of the proclamation for sale of the property. The judgment in W.P.(C).No.18838 of 2009 which is made available to me at the time of hearing does not indicate that such a contention was raised by the judgment debtor either before the execution court or before this Court in W.P.(C) No.18838 of 2009. As such, the judgment debtor is not entitled to raise such an objection in the

application filed by him to set aside the sale, in view of the bar contained in Rule 90(3) of Order XXI of the Code of Civil Procedure. There is, therefore, no merits in the appeal and the same is, accordingly, dismissed. All the interlocutory applications in the appeal are closed.

Sd/-

P.B.SURESH KUMAR, JUDGE.

tgs

(true copy)