

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE T.R.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.JYOTHINDRANATH

MONDAY, THE 27TH DAY OF JULY 2015/5TH SRAVANA, 1937

FAO.No. 233 of 2008 ()

AGAINST THE ORDER IN E.A.NO.2062/2007 IN E.P.No.29/2006 IN IN OS
752/2002 of II ADDL.SUB COURT,THRISSUR

APPELLANT/PETITIONER/3RD PARTY:

JAYAPRAKASHAN, AGED 60, S/O KARAYIL
THEKKOOTTU KUNJIRAVUNNY, KAZHIMPARAMBU DESOM
VALAPPAD VILLAGE, CHAVAKKAD TALUK.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENTS/RESPONDENTS/DECREE HOLDER AND JUDGMENT DEBTORS
AND AUCTION PURCHASER:

1. THE FEDERAL BANK LTD., POKKULANGARA BRANCH
2. K.M.I.ANTONY, S/O.LATE KMA ITTYECHAN,
KURUTHUKULANGARA MEENAPARAMBIL HOUSE, EDAMUTTAM PO
THRISSUR DISTRICT
3. SHEELA VINCENT, D/O.KMA ITTYECHAN,
ALAPPAT THOTTIYAN HOUSE, PAZHUVIL PO., THRISSUR.
4. LUCY JOSEPH, D/O.LATE KMA ITTYECHAN
KUTTIKKADAN HOUSE, KAIPAMANGALAM BEACH, THRISSUR.
5. SHEENA DAVIS, THATTIKURUVILA HOUSE
KATTOOR, THEKKUMMOOLA.

R5 BY ADV. SRI.BEPIN VIJAYAN
R2 BY ADV. SRI.P.M.BENZIR

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON
27-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**T.R.RAMACHANDRAN NAIR &
K.P.JYOTHINDRANATH, JJ.**

F.A.O.No.233 OF 2008

Dated this the 27th day of July, 2015

JUDGMENT

Ramachandran Nair, J.

This appeal is filed by the appellant aggrieved by the order in E.A.No.2062/2007 In E.PNo. 29/2006 in O.S.No.752/2002 of the Second Additional Sub Court, Thrissur.

2. The appellant herein is the decree holder in O.S.No.105/2002 of the same court and he has also filed E.P.No.275/2006 which is pending before the same court. The second respondent herein is the judgment debtor in the above case. In the execution petition, the total amount claimed was Rs.14,70,911/- as on the date of filing of the same.

3. The order impugned herein is one passed by the court below on an application filed under Order XXI Rule 90 of the Code of Civil Procedure for setting aside the sale as E.A.No.2062/2007 in E.P.No.29/2006. Mainly it is contended that there is inadequacy of

price, that the attachment obtained by the petitioner in the suit in O.S.No.105/2002 has not been shown in the sale proclamation and the correct encumbrance certificate has not been produced. Therefore he alleged fraud and collusion in conducting the sale.

4. The respondents 1 and 5 before the court below had raised various contentions including one of limitation. As regards the plea of limitation, it was held by the court below that since fraud is alleged, there is no limitation as the date of knowledge alone is sufficient. As far as the plea raised by the appellant that attachment was also not shown in the proclamation schedule, it was found to be true and the finding is also to the effect that the encumbrance certificate for the year 2002 has not been produced before the court. But the court below refused to interfere in the light of the fact that in the sale proclamation produced by the petitioner in E.P.No.275/2006, the valuation of the property is shown as only Rs.2 lakhs.

5. The upset price shown herein is Rs.3,10,000/- and the property was sold for Rs.3,29,000/-. It was alleged by the petitioner that the purchaser is none other than the wife's sister of the judgment

debtor, which was accepted by the court below.

6. The learned counsel for the appellant Sri.Sreekumar submits that the appellant's right will have to be protected. It is further pointed out that the property is very valuable being on the side of the National Highway which has got a terrace building and the same will fetch much value and the extent is also 94 cents. Learned counsel for the purchaser argued that the order passed is fully justified. He opposed the contentions of the learned counsel for the appellant.

7. As far as the sale of property in execution is concerned, every efforts will have to be taken by the court to see that maximum price is obtained. Here two suits have been decreed against the same judgment debtor. Therefore, in order to protect the rights of the decree holders an endeavour should have been taken to get the maximum price. Even though the court was of the view that as the petitioner has shown the value only as Rs.2 lakhs in the sale proclamation, no interference is needed, according to us, an opportunity should have been given to adduce evidence with regard to the true value of the property. On all the other grounds the court had accepted the

contentions of the appellant. It is submitted by the learned counsel for the appellant that a Commission will be applied, for assessing the value of the property and other relevant evidence also will be adduced by the appellant and therefore a fresh opportunity may be granted.

In the light of the fact that the attachment obtained by the petitioner was not shown in the schedule, it will be a violation of Rule 66 Sub Rule 2(c) and (e) of the Code of Civil Procedure. Considering the fact that it will be only in the interest of justice that the sale is set aside, we set aside the order impugned and send back the matter for fresh consideration by the court below. All opportunities will be given to both sides and the petitioner will also adduce evidence with regard to the true value of the property and other relevant aspects. Parties will bear their costs in this appeal.

T.R.RAMACHANDRAN NAIR, JUDGE

sv.

K.P.JYOTHINDRANATH, JUDGE