

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN
&
THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

Mat.Appeal.No. 45 of 2014 ()

APPELLANT(S)/PETITIONERS/CLAIM PETITIONERS:

1. VASUMATHY AGED 61 YEARS
W/O. PADMAKUMAR, P.V.HOUSE, NELLANADU
NEDUMANGAD, THIRUVANANTHAPURAM.
2. SUNILKUMAR, AGED 40 YEARS
S/O. PADMAKUMAR, P.V.HOUSE, NELLANADU
NEDUMANGAD, THIRUVANANTHAPURAM.

BY ADV.SRI.P.N.MOHANAN

RESPONDENT(S)/RESPONDENT/DECREE HOLDER:

BIJI
D/O. VIJAYAN, MARANIYIL VEEDU, KOTTUKUNNAM P.O.
NELLANADU, NEDUMANGAD,
THIRUVANANTHAPURAM-695541.

BY ADV. SRI.J.JAYAKUMAR

THIS MATRIMONIAL APPEAL HAVING COME UP FOR ADMISSION ON
05-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ami/

V.K.MOHANAN & P.D.RAJAN, JJ.

Mat.Appeal.No.45 of 2014

Dated this the 5th day of February, 2015.

J U D G M E N T

Mohanana, J.

The appellants are claimants in E.A.No.105/12 in E.P.No.70/10 in O.P.No.623/06 pending in the Family court, Nedumangad, filed under Order 38 Rule 8, Order 21 rule 58 and under Section 151 CPC. The case put forward by the appellants/claimants before the court below is that, out of 13 cents of property, lying in old Survey No.108, comprised in re-survey No.73/1 of Nallanadu village owned and occupied jointly by the petitioner, her son/the 2nd petitioner and another son Anilkumar and sister Sreelatha vide sale deed No.1346/84 of SRO, Vamanapuram, the said Sreelatha sold her share to the petitioners vide sale deed No.204/91, and the said Sreelatha expired on 19.7.2012. It is also the case of the claimants that, Anilkumar/the judgment debtor in the said execution petition was working at Pune ;

however he was found missing. So, according to the petitioners, they came to know about the attachment only on 3.8.2012. Thus, it is the specific case of the claimants that, the judgment debtor has only 1/3rd share and he is entitled to only 1/3rd share of the property and therefore the decree holder has no legal right to attach the entire property. Thus, accordingly prayed that, the attachment over the entire property may be lifted, particularly with respect to the property shared by the petitioners. The decree holder filed objection against the claim put forward by the petitioners.

2. After considering the rival contentions, the court below mooted a question for consideration, that, whether the claim petition is to be allowed or not. While considering the claim petition, the first petitioner was examined as PW1 and Annexures A1 and A2 were marked. However, no evidence was adduced from the side of the decree holder. After considering the entire evidence on

record and the rival claim, the learned Judge of the Family court found that, after 4.9.1991, the petitioners 1 and 2 and the judgment debtor became co-owners having equal share. On the basis of the above findings, the learned Judge has held that the petitioner can proceed against the $1/3^{\text{rd}}$ share only, which is actually lying in the name of the judgment debtor and consequently held that the attachment over $2/3^{\text{rd}}$ share will not affect their right and the petition was allowed and thus the attachment over $2/3^{\text{rd}}$ share of the petitioners is lifted. The said fact ordered to be intimated to the SRO and the Village officer concerned. It is against the above order, the claimants preferred this appeal.

3. Heard the learned counsel for the appellants and the respondent.

4. The learned counsel for the appellants during the course of argument, submitted that the claimants and the judgment debtor got the said property through from one Sreelatha as per Annexure A2 and thus they became co-

owners of the property covered by the attachment already ordered by the court below. So, according to the learned counsel, unless the metes and bounds are earmarked, the court below cannot proceed with the execution ; otherwise, the properties, which are legally under the possession and ownership of the petitioners, will be affected. We are not impressed with the above argument. On a perusal of the impugned order, it can be seen that, even according to the claimants, they are entitled to only $2/3^{\text{rd}}$ share of the properties and remaining $1/3^{\text{rd}}$ part belongs to the judgment debtor. As per the impugned order, the court below released $2/3^{\text{rd}}$ share of the property from the attachment which actually belonged to the claimants. So, we are of the view that, as such, there is no surviving grievance for the appellants, who are the claimants. It is also beyond dispute that Rule 66 notice has already been issued for sale of the property and it is the lookout of the court that the sale is affected only with respect to the $1/3^{\text{rd}}$

share of the property actually belonged to the judgment debtor.

In the result, we find no merit in this appeal and accordingly the same is dismissed.

Sd/-
V.K.MOHANAN, Judge

Sd/-
P.D.RAJAN, Judge

ami/

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P.A.to Judge