

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH**

WEDNESDAY, THE 2ND DAY OF DECEMBER 2015/11TH AGRAHAYANA, 1937

Mat.Appeal.No. 968 of 2014 ()

APPELLANT(S)/CLAIM PETITIONERS:

- 1. KALYANAKRISHNAN V.S., AGED 55 YEARS
S/O.PARAMESWARAN NAIR, VETTIKKODE KOCHUVEETIL,
EVOOR SOUTH MURI, PATHIYOOR VILLAGE
KARTHIKAPPALLY TALUK, KEERIKKAD P.O., PIN 690508.**
- 2. VALSALA KRISHNAN, AGED 48 YEARS
W/O.KALYANAKRISHNAN, VETTIKKODE KOCHUVEETIL
EVOOR SOUTH MURI, PATHIYOOR VILLAGE,
KARTHIKAPPALLY TALUK, KEERIKKAD P.O., PIN 690508.**

BY ADV. SRI.G.ANANTHANARAYANAN

RESPONDENT(S)/RESPONDENTS:

- 1. CHANDRASEKHARAN ACHARI, AGED 55 YEARS
S/O.VASU ACHARI, ALAMPALLIL KIZHAKKETHIL
AYIKKATTUMoola MURI, CHINGOLI VILLAGE,
KARTHIKAPPALLY TALUK, CHINGOLI P.O., PIN 690532.**
- 2. REMYA, AGED 27 YEARS,
D/O.REGHUNATHAN ACHARI, CHAKKITTATHARAYIL
PUTHIYAVILA MURI, KANDALLOOR VILLAGE,
KARTHIKAPPALLY TALUK, KANDALLOOR NORTH,
PATTOLI MARKET P.O., PIN 690531.**

**R2 BY ADV. DR.K.P.SATHEESAN (SR.)
R2 BY ADV. SRI.P.MOHANDAS (ERNAKULAM)
R2 BY ADV. SRI.ANOOP.V.NAIR
R2 BY ADV. SRI.S.VIBHEESHANAN**

**THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON
02-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

C.K. ABDUL REHIM & MARY JOSEPH, JJ.

Mat.Appeal No. 968 of 2014

Dated this the 02nd day of December, 2015.

J U D G M E N T

C.K. ABDUL REHIM,J

Challenge in this appeal is against an order passed by the Family Court, Alappuzha in I.A No. 2618/2006 in O.P No. 527/2006. Through the impugned order a claim petition filed by the appellant under Order XXXVIII Rule 8 of the Code of Civil Procedure was closed, stating the reason that the original petition stands already disposed of. According to the appellants, they are bonafide purchasers of the property under attachment and the order of attachment before judgment passed by the court below is liable to be lifted. Evidently, the court below had closed the application since it could not proceed further with adjudication of the claim because the suit stands decreed. Apparently there is no error of jurisdiction committed by the court below. But learned counsel for the appellants contended that the appellants were deprived of their remedy to get the attachment

lifted since the said application was not considered on merits.

2. The position no more remains as *res integra*. A Division Bench of this Court in **Praveen Sheno v. State Bank of India [2014(1) KLT 736]** observed that, an order of attachment before judgment will continue to operate even after a decree. It is held that the question referable to any claim as against the property under attachment can be considered after passing of the decree, only on the execution side. The decree having been passed, such an adjudication would necessarily be one which would include all questions arises between the parties to the proceedings or their representatives including the question relating to right title or interest in the property attached. Therefore the application filed under Order XXXVIII Rule 8 could have been treated as an application on the execution side requiring adjudication in terms of Order XXI Rule 58 of C.P.C. Referring to a decision of the High Court of Andhra Pradesh in

J.Ramamurthy v. S.C Gen.M & C Agents [AIR 1989 AP 58] the court observed that as the application could not have been decided upon by the court below in the trial side after passing of the decree, the procedure to be followed is only in terms of Order XXI Rule 58.

3. In view of the dictum contained in **Praveen Sheno**i's case (supra) it is clear and evident that the court below could not have proceeded with the interim application on the trial side, after passing of the decree. Hence the Family Court had rightly rejected the claim petition. It is left open to the appellants to move before the Execution Court for getting the order of attachment lifted, by recourse to procedure contemplated in Order XXI Rule 58. Learned counsel for the appellant had raised an apprehension that the order impugned in this appeal may stand against entertaining such an application. Since it is noticed that the claim petition was not adjudicated or decided on merits there is no basis for such an apprehension. It is made clear that the appellants will be

at liberty to move the Execution Court by invoking provisions under Order XXI Rule 58.

The appeal is hereby dismissed, subject to liberty as mentioned above.

Sd/-C.K. ABDUL REHIM
Judge

Sd/-MARY JOSEPH
Judge

Isn