

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.T.SANKARAN

MONDAY, THE 23RD DAY OF MARCH 2015/2ND CHAITHRA, 1937

OP(C).No. 742 of 2012 (O)

E.A.NO.78/2012 IN E.P.NO.322/2010 IN O.S.NO.175/2005 ON THE FILE OF THE
SUBORDINATE JUDGE, THALASSERY

PETITIONER(S):

R.K.MUHAMMED, AGED 55 YEARS
S/O.MOIDU, PROPRIETOR, R.K.BAKERY
RESIDING AT PUTHIYADATHIL HOUSE, KADAVATHOOR P.O.,
CHOKLI VIA, KANNUR DIST

BY ADV. SRI.CIBI THOMAS

RESPONDENT(S):

KASIM VALLAVOOR
S/O.ABDULLA HAJEE, AGED 51
VELLAVOOR MEKKUNU, CHOKLI AMSOM
MENAPRAM DESOM, THALASSERY TALUK
KANNUR DIST.-670001

R1 BY ADV. SRI.C.KHALID
R1 BY ADV. SMT.P.VANDANA
R1 BY ADV. SRI.PHIJO PRADEESH PHILIP

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 23-03-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C) 742/2012

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE EXECUTION PETITION FILED BY THE
RESPONDENT.

EXT.P2: TRUE COPY OF THE COUNTER FILED IN THE EXECUTION PETITION

EXT.P3: TRUE COPY OF THE AFFIDAVIT FILED IN SUPPORT OF EA 78/2012

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.A. TO JUDGE

K.T.SANKARAN, J.

O.P.(C) No.742 of 2012

Dated this the 23rd day of March, 2015

JUDGMENT

The petitioner is the judgment debtor in O.S.No.175 of 2005 on the file of the court of the Subordinate Judge of Thalassery. The decree was passed on 13.10.2008 against the petitioner for realisation of a sum of ₹2,42,314/- together with interest. The total amount claimed in E.P.No.322 of 2010 filed by the respondent is ₹3,79,760/-. The decree holder prayed for realisation of the amount by sale of an extent of 38 cents of land.

2. The petitioner/judgment debtor filed a counter statement dated 1.7.2011 in the Execution Petition stating that he is prepared to pay the decree amount and he may be permitted to pay the amount in monthly instalment of ₹10,000/-

each. Later, in February 2012, he filed an application (E.A.No.78 of 2012) to appoint a Commissioner to inspect the lie and nature of the petition schedule property. In the affidavit accompanying the application, the judgment debtor stated that he had already paid ₹1,15,000/- and it is not necessary to sell the entire extent of land for realisation of the balance amount. According to the decree holder, sale of 1.5 cents of land is enough. The grievance of the judgment debtor is that the court below proceeded with the sale of the entire extent of land without appointing a Commissioner. The relief prayed for in the Original Petition is to issue a direction to the executing court to consider and pass orders on E.A.No.78 of 2012.

3. In **Ambati Narasayya v. M.Subba Rao and another** (AIR 1990 Supreme Court 119), the Supreme Court held that a duty is cast upon the Court under Order 21 Rule 64

to sell only such property or a portion thereof as necessary to satisfy the decree. It is a mandate of the legislature which cannot be ignored. It is of importance to note from Order 21 Rule 64 that in all execution proceedings, the Court has to first decide whether it is necessary to bring the entire attached property to sale or such portion thereof as may seem necessary to satisfy the decree. If the property is large and the decree to be satisfied is small, the Court must bring only such portion of the property, the proceeds of which would be sufficient to satisfy the claim of the decree holder.

4. In the present case, the extent of the property involved is 38 cents. The executing court has to decide whether it is necessary to sell the entire extent of property for realisation of the balance decree amount or whether it is sufficient to sell a lesser extent. If the court finds it necessary to appoint a

Commissioner, the court may do so. Both parties would be entitled to assist the court in arriving at a conclusion in this regard and both parties would be entitled to produce a sketch of the property before court, so that even without appointing a Commissioner, the court would be able to come to a correct conclusion with respect to the question whether to satisfy the balance decree amount, it is necessary to sell the entire extent of land sought to be sold.

The Original Petition is allowed to the above extent with the above directions. The executing court shall decide the question mentioned above on or before 15th June, 2015. The parties shall produce all relevant materials including sketch of the property on or before 22nd May, 2015.

**K.T.SANKARAN
JUDGE**