

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 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

MA (EXE.).No. 3 of 2013 ()

**(AGAINST THE ORDER DATED 13-12-2012 IN EA No.111/2007 IN EP No.25/2005
IN OS No.192/1998 OF FAMILY COURT, KOTTARAKKARA)**

APPELLANTS/PETITIONERS/JUDGEMENT DEBTORS/RESPONDENTS:

- 1. PARUKUTTY,
AGED 81 YEARS, D/O.UMMINI,
NEDIYAVILA, ATTUVASSERY
MAVADI P.O., KULAKKADA, KOTTARAKKARA.**
- 2. NARAYANAN,
AGED 83 YEARS, NEDIYAVILA,
ATTUVASSERY, MAVADI P.O
KULAKKADA, KOTTARAKKARA.**

**BY ADVS.SMT.S.K.DEVI
SRI.SANTHOSH P.ABRAHAM**

RESPONDENT/RESPONDENTS/DECREE HOLDER/PETITIONER:

**BOBY
CHEMBAKASSERY,
MUNDAKKAL EAST, KOLLAM 686 002.**

BY ADV. SRI.S.ARUN RAJ

**THIS MAT APPEAL (EXECUTION) HAVING COME UP FOR ADMISSION ON
28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

Mat. Appeal (Exe.) No. 3 OF 2013

DATED THIS THE 28th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The above appeal is filed challenging the order passed by the Family Court, Kottarakkara in EA No.111/2007 in EP No.25/2005 in OS No.192/1998 dated 13-12-2012. The appellants herein, who are the Judgment Debtors 2 & 3, filed EA No.111/2007 seeking to exempt them from the sale proceedings under Section 60 (c) of the Code of Civil Procedure, claiming that the 4 cents of property standing in the name of the 2nd judgment debtor contains a residential house and that apart from the said property the appellants do not have any other property including movables or immovables. It is contended that the residential house situated in the property is a tile roofed one and there is no utensils except the cooking utensils. According to the appellants, if the property is sold in auction, they will

thrown to the street and the property is required only for residential purpose. The respondent herein, who is the decree holder, had resisted the application by refuting the allegation that the 1st appellant/2nd judgment debtor is doing domestic service in other houses. It is also disputed the 2nd judgment debtor had only 4 cents of property, because as per the revenue records she has got another 54 cents of property. It is pointed out that, in the objections filed to the execution petition, the judgment debtors 2 & 3 have admitted that they have 7 cents of property and a house therein. Therefore it is contended that the averments in the EA is lacking bonafides.

2. The court below while considering the said execution application had taken oral evidence of the 2nd appellant/ 2nd judgment debtor as PW1 and the respondent/decrece holder as DW1. The court below found that the 1st Judgment Debtor/1st respondent in the OP was remaining ex-parte in the execution petition and appellants who are judgment debtors 2 & 3 alone had filed objections.

EA No.111/2007 was filed by the judgment debtors 2 & 3. But it is noticed that, in the objections filed by them during the year 2007, no contention was seen taken to the effect that the 2nd judgment debtor is a domestic servant and that she is entitled to get exemption from the sale proceedings under Section 60 (c) of the Code of Civil Procedure. The Court below also found that attachment with respect to the property was effected as early as on 21-07-1998 and the sale proceedings was initiated during the year 2011. The upset price was fixed and the property was proclaimed for sale on 25-10-2011. The decree holder, who is the respondent herein, was permitted to participate in the auction by virtue of order dated 07-12-2011. The decree holder bid in auction the property for a sum of Rs.3,50,000/- and the sale stands posted for confirmation on 10-02-2012. The appellants have raised a contention that the 2nd judgment debtor is a domestic servant and that the residential building and 4 cents are liable to be exempted. It is noticed that the appellants have not filed any objection to

Rule 66 notice despite receipt of the same as early as on 22-07-2002. The present execution application was filed only on 06-09-2007, is the findings of the court below. While evaluating the oral evidence the court below found that the PW1 had given evidence to the effect that she got 1 Acre and 24 cents of property from her mother. It was deposed by her that her children are employed and settled at various places and that she is living on the help of adjacent residents and relatives. It is admitted by her in evidence that there is no necessity for her to approach any other persons for food or other help. She had denied that she is going to other houses for her livelihood. She had denied that she used to do domestic works in other houses. The respondent while examining as DW1 had deposed that the 1st appellant has got other properties and denied that she is working as a domestic servant. The court below had also examined all the records connected with the proceedings in the execution petition and found that the appellants have never raised any contention seeking exemption under

Section 60 (1) (c) of the Code of Civil Procedure. Therefore it is evident that the exemption now claimed is not sustainable. Hence the execution application was dismissed.

3. Heard; counsel on both side. On a quick reappraisal of the conclusions arrived by the Family Court in the impugned order, in which detailed discussions are there with respect to the factual aspects, we are of the considered opinion that there is no error, illegality or impropriety committed by the Family Court in dismissing the execution application filed seeking exemption from the sale. It is to be noticed that the sale has already taken place and the execution petition now stands posted for confirmation of the sale. Evidently, the application seeking exemption from the sale was filed without any basis. Further, on appreciating the circumstances and evidence, the court below had rightly found that the appellants are not entitled for the claim for exemption raised under Section 60 (1) (c) of the Code of Civil Procedure.

4. Therefore this court do not find any circumstances existing for interference with the impugned order.

5. Consequently the appeal fails and the same is hereby dismissed.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge