

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

TUESDAY, THE 31ST DAY OF JULY 2012/9TH SRAVANA 1934

OP(C).No. 3411 of 2012 (O)

AGAINST THE ORDER IN E.A.NO.412/2003 IN E.P.NO.33/2001 of MUNSIFF
COURT, ALATHUR DATED 05.07.2012

PETITIONER/3RD PETITIONER:

R.VELLA, AGED 66 YEARS
S/O RAKKAN, RESIDING AT MUNNAZHIPARAMBU
ANJUMOORTHYIL, MANGALAM AMSOM DESOM, VADAKKENCHERY
ALATHUR TALUK

BY ADV.SRI.P.R.VENKETESH
SMT.ASHA P.KURIAKOSE

RESPONDENT/RESPONDENTS 1-4 & PETITIONERS 1,2 AND 4-11:

1. GOPI,
S/O VELAN, RESIDING AT CHOLAKOTTU KUNNU
MANGALAM AMSOM DESOM, ALATHUR TALUK
PALAKKAD DISTRICT 678682

2. T.P SANNI,
S/O JOSEPH, RETIRED SALES TAX OFFICER
RESIDING AT THEVARAVALAKADU VEEDU, ANJUMOORTHYIL
MANGALAM AMSOM DESOM, ALATHUR TALUK
PALAKKAD DISTRICT 678682

3. M.VELLA,
S/O MANGODAN
FORMERLY PRESIDENT IN VADAKKENCHERY HARIJAN
SERVICE CO-OPERATIVE SOCIETY
RESIDING AT ANJUMOORTHYIL, MANGALAM, VADAKKENCHERY
ALATHUR TALUK 678682

4. M. V. CHELLAN
S/O VELAYUDHAN, RESIDING AT UDHAYA NIVAS
ERATTUPARAMBU, ANJUMOORTHYIL, MANGALAM AMSOM DESOM
VADAKKENCHERY, ALATHUR TALUK 678682

5. K. RAJAN
S/O KUNJAN, RESIDING AT KARUVAPADAM, ERATTUPARAMBU
ANJUMOORTHYIL, MANGALAM AMSOM DESOM, VADAKKENCHERY
ALATHUR TALUK 678682

6. M. VELAYUDHAN,
S/O MANGODAN, RESIDING AT MUNNAZHIPARAMBU
ERATTUPARAMBU, ANJUMOORTHYIL, MANGALAM AMSOM DESOM
VADAKKENCHERY, ALATHUR TALUK 678682

7. BABY,
S/O MANIKAN, RESIDING AT VENATTU VEEDU, KALAPARAMBU
ERATTUPARAMBU, ANJUMOORTHYIL, MANGALAM AMSOM DESOM
VADAKKENCHERY, ALATHUR TALUK 678682

8. GOPI,
S/O BALAN, RESIDING AT KARUVAPADAM, ERATTUPARAMBU
ANJUMOORTHYIL, MANGALAM AMSOM DESOM, VADAKKENCHERY
ALATHUR TALUK 678682

9. C. RADHAKRISHNAN,
S/O CHAMI, RESIDING AT VENATTUKALAPARAMBU
ERATTUPARAMBU, ANJUMOORTHYIL, MANGALAM AMSOM DESOM
VADAKKENCHERY, ALATHUR TALUK 678682

10. K. RAJAN,
S/O KANDAN, RESIDING AT CHERUMKODE, ERATTUPARAMBU
ANJUMOORTHYIL, MANGALAM AMSOM DESOM, VADAKKENCHERY
ALATHUR TALUK 678682

11. K. VELAYUDHAN,
S/O KUNJAN, RESIDING AT KARUVAPADAM, ERATTUPARAMBU
ANJUMOORTHYIL, MANGALAM AMSOM DESOM, VADAKKENCHERY
ALATHUR TALUK 678682

R2 BY ADV. SRI.P.B.KRISHNAN
R2 BY ADV. SMT.GEETHA P.MENON
R2 BY ADV. SRI.N.AJITH
R2 BY ADV. SRI.P.B.SUBRAMANYAN

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2012, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

EXT. P1 TRUE COPY OF THE OBJECTION DATED 12-09-2002 SUBMITTED BY VELLA THE PRESIDENT BEFORE THE MUNSIFF'S COURT, ALATHUR

EXT. P2 TRUE COPY OF THE COUNTER STATEMENT DATED 10-1-2003 FILED BEFORE THE MUNSIFF'S COURT, ALATHUR AGAISNT EXT P1

EXT. P3 TRUE COPY OF THE ORDER OF THE JOINT REGISTRAR APPOINTING THE ADMINISTRATOR DATED 19-11-2002

EXT. P4 TRUE COPY OF THE ORDER DATED 04-03-2003 PASSED IN EA NO 16/2003 OF THE COURT OF MUNSIFF ALATHUR

EXT. P5 TRUE COPY OF THE PETITION DATED 17-12-2003 FILED BY THE PETITIONER AND 11 OTHER BEFORE THE MUNSIFF COURT, ALATHUR IN EP 38/2001

EXT. P6 TRUE COPY OF THE ORDER DATED 13-08-2004 IN EA NO 412/2003 OF THE COURT OF THE MUNSIFF, ALATHUR

EXT. P7 TRUE COPY OF THE ORDER DATED 15-06-2006 IN W.P(C).NO 34884/2004 OF THIS HON'BLE COURT

EXT. P8 TRUE COPY OF THE APPLICATION ARC NO 750/1997 IN EP 38/2001 IN EA 412/2003 BEFORE THE MUNSIFF COURT, ALATHUR DATED 26-06-2012

EXT. P9 TRUE COPY OF THE ORDER DATED 05-07-2012 DISMISSING UNNUMBERED EA IN EA NO 412/2003 IN EP NO 33/2001 BY THE MUNSIFF COURT, ALATHUR

RESPONDENTS' EXHIBITS: NIL

True Copy

P.A to Judge

SUNIL THOMAS, J.

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O.P(C).No.3411 of 2012

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Dated this the 31st day of July, 2015

JUDGMENT

The third judgment debtor is the petitioner herein.

2. The first respondent herein, obtained an award, in an arbitration proceeding against the Society. It appears that during the execution proceedings, Society was under an Administrator and thereafter, represented through its members. In execution, the property was brought for sale and sold in auction on 03.09.2003. The sale was confirmed on 05.11.2003 and sale certificate was issued in favour of the auction purchaser, who is the second respondent herein. Ultimately, the property was delivered. In the meanwhile, an application was filed as E.A.No.16 of 2003 seeking to set aside the sale held on 03.09.2003. The court below dismissed E.A.No.16 of 2013 by Ext.P4 order. Another E.A.No.412 of 2003 was filed for the same relief before the Munsiff Court, which was dismissed by order dated 13.08.2004, marked as Ext.P6. This was challenged by the 4th respondent herein (who was the petitioner in that E.A.) in W.P(C).No.34884 of 2004 which culminated in Ext.P7 order. This Court, by the above order, allowed the writ petition and

the impugned order was set aside. Executing court was directed to take back E.A.No.412 of 2003 in E.P.No.38 of 2001 to file and to dispose of the same afresh. It appears that on 28.02.2007, petitioner herein was not present and consequently, E.A was dismissed for default. An application to restore the E.A. was filed on 28.06.2012. That was dismissed by Ext.P9 order which is under challenge in this original petition.

3. Heard learned counsel for the petitioner and the learned senior counsel for the auction purchaser.

4. It is evident that by Ext.P7 order, judgment debtors were given an opportunity to contest the entire proceedings and to approach the Court to seek setting aside sale on the grounds urged therein. The application was dismissed for default. Thereafter an unnumbered application was filed to restore E.A. after a long delay of 5½ years. The delay was sought to be explained on the ground that the petitioner herein was suffering from various ailments, including kidney problems from 2006 onwards. According to him, he is continuing treatment even now. He further claimed that he was entrusted by remaining members to contest the proceedings.

5. Even with all leniency that could be shown, the reasons stated by the petitioner to seek restoration of the application is still

not at all believable. It is further to be noted that the application was filed after a long delay of 5½ years. In an execution proceeding, petitioner could not have sought for condonation of delay also.

In the above circumstances, the impugned order does not suffer from any illegality liable to be interfered in a writ proceeding. I find no reason to interfere. The original petition is accordingly dismissed.

Sd/-
SUNIL THOMAS
Judge

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