

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

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

OP(C).No. 332 of 2015 (O)

(EP.NO. 25/2002 OF MUNSIFF'S COURT, PEERMADE)

PETITIONER :

**THE HAILEYBURIA TEA ESTATE LTD.,
REGISTERED OFFICE AT MARAR ROAD,
WELLINGTON ISLAND, KOCHI-680 003,
REPRESENTED BY ITS ASST. GENERAL MANAGER M.SASIKUMAR.**

**BY ADVS.SRI.BIJU .C. ABRAHAM
SRI.SABU THOMAS (THUDIAMPLACKAL)**

RESPONDENT :

**ISRABEL, AGED 48 YEARS,
S/O THANKAYYA NADAR, CR NO.406, SEMINIVALLEY ESTATE,
ELAPPARA KARA, ELAPPARA VILLAGE, IDUKKI DISTRICT,
ELAPPARA P.O, PIN-685 501**

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 05-02-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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OP(C).No. 332 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1: TRUE COPY OF THE COMMISSION REPORT DATED 18.2.2009 ALONG WITH VALUATION STATEMENT ISSUED BY THE ASSISTANT ENGINEER PWD, BUILDING SECTION
- EXT.P2: TRUE COPY OF THE OBJECTION DATED 12.8.2009 FILED BY THE PETITIONER
- EXT.P3: TRUE COPY OF THE BUILDING TAX ASSESSMENT REGISTER OF THE PANCHAYAT
- EXT.P4: TRUE COPY OF THE ORDER DATED 7.1.2012 OF THE MUNSIFF COURT, PEERMADE IN EP NO. 25/2002
- EXT.P5: TRUE COPY OF THE JUDGMENT DATED 8.11.2012 IN OP (C) NO.1344/2012 OF THIS HON'BLE COURT
- EXT.P6: TRUE COPY OF THE ORDER DATED 12.8.2014 IN EP NO. 25/2002 OF THE MUNSIFF COURT, PEERMADE

RESPONDENT(S)' EXHIBITS: NIL

/TRUE COPY/

P.A.TO.JUDGE

sts

P.BHAVADASAN, J.

O.P.(C) No. 332 of 2015

Dated this the 05th day of February, 2015

J U D G M E N T

Under challenge is Ext.P6 order whereby the court below took the value of improvements due to the judgment debtor as ₹ 4,14,600/- and directed that the said amount be appropriated from a sum of ₹ 6,44,333/- already deposited at State Bank of Travancore, Peermade.

2. The facts absolutely necessary for the disposal of this petition are as follows:

The petitioner was able to obtain a decree for eviction of judgment debtors subject to the liability of the petitioner to pay value of improvements to the judgment debtor. On an earlier occasion, the value of improvements was assessed as ₹ 6,44,333/- and that was directed to be paid to the judgment debtor. That order was challenged before this Court in O.P.No. 1344/2012 wherein this Court finding that there were no reasons given for adopting the various

amounts, set aside the order and remanded the case to the execution court for disposal in accordance with law. However, this Court while disposing of the original petition directed that fresh assessment will be made with regard to the trees as well as the building regarding the value of improvements. After the matter went back to the execution court, evidence was adduced and documents were produced. On an evaluation of the materials before it, the court below came to the conclusion that the judgment debtor is entitled to ₹4,14,600/- as value of improvements.

3. The main attack against the order is regarding the valuation of the main building which is valued as ₹2,22,000/-. Relying on the tax receipt produced, it was contended that the value of the building cannot be as assessed by the Commissioner. It is trite that the tax receipt is not on the basis of the value of building but on rental basis. Further, CW2 has given evidence as to how the evaluation was made and the manner in which the amount

was arrived at by the Commissioner. No infirmity could be shown to the said finding. The court below has considered each of the objections raised by the petitioner with regard to the value of various improvements claimed by the judgment debtor and has given cogent and convincing reason as to why the amounts arrived at by the execution court is payable to the judgment debtor.

4. After having anxiously gone through the order of the court below, this Court finds no ground to interfere with the assessment of value of improvement at ₹4,14,600/- made by the court below.

5. As per the order of this Court on an earlier occasion, a sum of ₹ 6,44,333/- has been deposited by the decree holder at State Bank of Travancore, Peermade. The court below has disposed of the petition by pointing out that the judgment debtor shall deliver the possession of the decree schedule property within two months from the date of this order after receiving ₹ 4,14,600/- from the above

deposit.

6. The learned counsel appearing for the petitioner pointed out that it may be clarified that if the judgment debtor does not withdraw the amount within a period of two months, he may be allowed to take execution proceedings and get the premises vacated.

7. Though it is inherent in the order, it is clarified that if the judgment debtor does not withdraw the amount within two months from the date of the order and thereafter surrender vacant possession, the petitioner will be entitled to take such steps as are available to him under law to have the premises vacated.

With the above observation, this petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge