

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

OP(C).No. 386 of 2015 (O)

I.A.NO.2857/2014 IN O.S.NO.85/2014 OF THE SUB COURT, OTTAPPALAM

PETITIONER(S) :

**SAJEE KARAN P., AGED 44 YEARS,
S/O.PRABHAKARAN NAIR, SAJI NIVAS,
MANISSERY P.O., OTTAPALAM - 679 521**

**BY SRI.T.SETHUMADHAVAN (SENIOR ADVOCATE)
ADVS.SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR
SMT.VANDANA MENON
SMT.N.DEEPA**

RESPONDENT(S) :

- 1. V.K.ACHUTHA PRAKASH, AGED 48 YEARS,
S/O.LATE V.K.KUMARAKRISHNAN,
VENGASSERY KIZHAKKETHIL, ANANGANADI, PANAMANNA P.O,
OTTAPALAM, PALAKKAD-679 521.**
- 2. RATNAKUMARI @ R.K.THANKAM, AGED 75 YEARS,
NAHARASSERY VEEDU, MAKKAPPARAMBU ROAD,
PONEKARA, AIMS P.O., KOCHI-680 041.**
- 3. V.K.MEENAKUMARI, AGED 52 YEARS,
D/O.LATE KUMARAKRISHNAN, SHRUTHI,
KAMALAYA ROAD, OTTAPALAM, PALAKKAD- 679 521.**
- 4. V.K.BEENAKUMARI, AGED 32 YEARS,
D/O.LATE KUMARAKRISHNAN, NAHARASSERY VEEDU,
MAKKAPPARAMBU ROAD, PONEKARA, AIMS P.O., KOCHI-680 041.**

R2 & R4 BY ADV. SRI.VINOD KUMAR.C

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

A.HARIPRASAD, J.

O.P.(C). No.386 of 2015

Dated this the 25th day of June, 2015

JUDGMENT

Petitioner challenges the order passed by the Subordinate Judge, Ottappalam on I.A.No.2857 of 2014 in O.S.No.85 of 2014 whereby the court dismissed a petition for attachment before judgment filed under Order XXXVIII Rule 5 of the Code of Civil Procedure (in short, "CPC"). Ext.P3 is the impugned order.

2. Heard the learned counsel for the petitioner and the contesting respondents.

3. Petitioner is the plaintiff in the above suit. According to the petitioner, father of the contesting respondents borrowed an amount of ₹12,00,000/- from the petitioner for improving his business. Learned counsel for the respondents contended that the whole transaction is disputed and it is the case of the respondents that the suit itself is without any bonafides. I do not wish to make any comment on the maintainability of the suit at this juncture.

4. Court below dismissed the petition for attachment before judgment finding that the amount sought to be attached was not proved to be exclusively belonging to the deceased. Along with the original petition,

a list of fixed deposits said to be in the name of deceased Kumarakrishnan Ezhuthachan had been produced. This Court on 11.02.2015 passed an interim order attaching the fixed deposits shown in the original petition schedule and the order is still in force. Learned counsel for the respondents submitted that along with the counter affidavit in this proceedings, they have produced a document showing that deceased Kumarakrishnan Ezhuthachan was owning nearly 90 cents of immovable property. It is also submitted that apart from this property, the deceased was owning other properties as well. It is the submission of the contesting respondents that the petitioner without any bonafides falsely filed the suit at the instigation of one of the sons of the deceased.

5. After hearing counsel on both sides and perusing the relevant records, I am of the view that there is no bar for the petitioner in approaching the trial court with a fresh application for attachment under Order XXXVIII Rule 5 CPC, if legal requirements are satisfied. In that event, the petitioner can seek attachment of the fixed deposits shown in the original petition or the immovable property, as the case may be, if he satisfies the legal requirements for claiming an attachment. I do not find any reason to interfere with the order passed by the learned Subordinate Judge in the matter. However, it is made clear that the interim order of attachment passed by this Court in respect of the fixed deposits mentioned

in the original petition will continue for a period of one month. In the meantime, if the petitioner takes steps before the court below, the learned Subordinate Judge shall dispose of the matter within a period of one month thereafter in accordance with law.

With this direction, original petition is disposed of.

A. HARIPRASAD, JUDGE.

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