

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

OP(C).No. 394 of 2015 (O)

I.A.NO.2263/2014 IN O.S.NO.300/2013 OF MUNSIF COURT, PALA

PETITIONER(S) :

**THOMASKUTTY STEPHEN,
S/O.STEPHEN, MADATHIL HOUSE,
CHERUPUNKAL (P.O), VADAKKEPERINGOTTUKAVU KARA,
KIDANGOOR VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT.**

**BY SRI.RAJU JOSEPH (SENIOR ADVOCATE)
ADVS. SRI.K.T.POULOSE (KORATTY)
SRI.GEORGE KUTTY MATHEW**

RESPONDENT(S):

**PHILIP THOMAS,
S/O.THOMAS, MADATHIL HOUSE,
CHERUPUNKAL (P.O), VADAKKEPERINGOTTUKAVU KARA,
KIDANGOOR VILLAGE, MEENACHIL TALUK,
KOTTAYAM DISTRICT.**

BY ADV. SRI.JACOB E SIMON

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Msd.

OP(C).No. 394 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE ORDER IN I.A NO.1770 OF 2013 IN
O.S NO.300 OF 2013 ON THE FILE OF THE MUNSIFF COURT, PALA
DATED 23-05-2014.**

**EXT.P2: TRUE COPY OF I.A.NO.2263 OF 2014 IN O.S.NO.300 OF 2013 ON
THE FILE OF THE MUNSIFF COURT, PALA DATED 20-02-2014.**

**EXT.P3: TRUE COPY OF THE OBJECTION FILED BY THE RESPONDENT IN
I.A.NO.2263 OF 2014 IN O.S.NO.300 OF 2013 ON THE FILE OF
THE MUNSIFF COURT, PALA.**

**EXT.P4: TRUE COPY OF THE ORDER PASSED BY THE LEARNED MUNSIFF
COURT PALA IN I.A.NO.2263 OF 2014 IN O.S.NO.300 OF 2013
DATED 20-12-2014.**

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.S.TO JUDGE.

Msd.

P. BHAVADASAN, J.

O.P.(C). No. 394 of 2015

Dated this the 1st day of April, 2015.

JUDGMENT

This is a petition filed under Article 227 of the Constitution of India seeking the following reliefs:

“Set aside Ext.P4 order passed by the learned Munsiff, Pala in I.A. No. 2263 of 2014 in O.S. No. 300 of 2013 dated 20.12.2014.”

2. The grievance of the petitioner is that for the plaint amount which comes to nearly Rs. 7 Lakhs, the properties worth several lakhs have been attached in the proceedings and as per the fair value fixed, the valuation would come to Rs.1,25,000/- per cent. The property attached is in Sy. No.180/3 of Kidangoor Village. Petitioner points out that if a portion of the property is released from the attachment, he will be able to sell the property and wipe off the debt. He also says that he has suffered conviction in

a proceedings under Section 138 of the Negotiable Instruments Act and he has to pay amount in that regard also. Whatever that be, he points out that a portion of the property which is now attached may be released so that he can sell the same and pay off the debt.

3. Learned counsel for the respondent drew the attention of this Court to the petition and pointed out that the petitioner had offered 34 Ares of property comprised in Sy. No.179/2-1 for lifting the attachment over 47 Ares of property comprised in Sy. No. 180/3. According to the respondent, if the petitioner is so inclined, attachment order may be substituted and made applicable to the property comprised in Sy. No. 179/2-1.

4. Learned counsel for the petitioner points out that the entire 34.90 Ares of land is not necessary to be attached for the plaint amount which comes to Rs.Six Lakhs and odd as the value of the property is more than Rs.52

Lakhs. It is pointed out by the learned counsel for the petitioner that even in respect of the property comprised in Sy.No. 179/2-1, it is not necessary to fasten attachment over the entire property.

5. Learned counsel for the respondent then pointed out that he has no objection in substituting the attachment of the property comprised in Sy. No. 179/2-1, but it should be ensured that it is free from encumbrances and the portion to be attached will have direct access.

6. The prayer made by the learned counsel for the respondent is just and reasonable. It is therefore felt that 34.90 Ares of property comprised in Sy. No. 179/2-1 need not be attached for, its valuation is too far in excess than what is claimed as per the decree.

Therefore, the attachment over 47.24 Ares of land comprised in Sy. No. 180/3 will stand lifted and instead 25 cents having direct access from Sy. No. 179/2-1 out of

34.90 Ares of land shall stand attached, provided the property comprised in Sy.No.179/2-1 does not suffer from any encumbrances. Inform Registration Office concerned.

This Original Petition is disposed of as above.

sb.

P. BHAVADASAN,
JUDGE