

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

TUESDAY, THE 9TH DAY OF JUNE 2015/19TH JYAISHTA, 1937

OP(C).No. 1915 of 2013 (O)

EP 245/2010 IN O.S. 172/04 OF PRINCIPAL SUB COURT, IRINJALAKKUDA

PETITIONER :

MANUAL SONS FINANCIAL ENTERPRISES PVT. LTD.,
M.O ROAD, THRISSUR, REP.BY ITS MANAGING DIRECTOR
P.M.MANUEL

BY ADVS.SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

RESPONDENTS :

1. C.M.DINESH
S/O.CHERAMPARAMBIL MANOHARAN, KODALY DESOM,
MATATHUR VILLAGE, THRISSUR TALUK
THRISSUR DISTRICT 680 684
2. A.N.NALINI,
W/O.CHERAMPARAMBIL MANOHARAN, KODALY DESOM,
MATATHUR VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT 680 684
3. K.C. ARAVINDAKSHAN,
S/O.KOLAYATTIL CHERU, IRINJALAKUDA DESOM,
MANAVALASSERY VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT 680 001
4. LUKOSE,
S/O.VALLOPPILLY CHERIYAN, KODALY DESOM,
MATTATHUR VILLAGE, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT - 680 684

R4 BY ADV. SRI.G.SREEKUMAR (CHELUR)

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 09-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1: TRUE COPY OF DECREE IN O.S 172/04 BEFORE THE ADDITIONAL SUB COURT, IRINJALAKUDA.
- EXHIBIT P2: TRUE COPY OF E.P 245/10 IN O.S 172/04 OF PRINCIPAL SUB COURT, IRINJAKUDA
- EXHIBIT P3: TRUE COPY OF DRAFT SALE PROCLAMATION SUBMITTED BY THE PETITIONER IN E.P 245/10 IN O.S 172/04 OF PRINCIPAL SUB COURT, IRINJALAKUDA.
- EXHIBIT P4: TRUE COPY OF E.A 1114/12 E.P 245/10 IN O.S 172/04 OF PRINCIPAL SUB COURT, IRINJALAKUDA
- EXHIBIT P5: TRUE COPY OF ORDER DATED 11/12/12 IN E.P 245/10 IN O.S 172/04 OF PRINCIPAL SUB COURT, IRINJALAKUDA.
- EXHIBIT P6: TRUE COPY OF ORDER DATED 11/12/2012 IN E.A 1114/12 IN E.P 245/10 IN O.S 172/04 OF PRINCIPAL SUB COURT, IRINJALAKUDA.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

bp

B.KEMAL PASHA, J.

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O.P.(C). No.1915 of 2013

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Dated this the 9th day of June, 2015

J U D G M E N T

A suit for money was decreed. The decree was put in execution. The property of the judgment debtor were attached. In sale proceedings, the proclamation for sale was settled. The property was put in auction. In the auction sale, there were no bidders at all. The decree holder who was present, was also not in a position to bid the property as the upset price fixed was very high. The decree holder, had a specific case that the upset price fixed was too high and there would not be any prospective bidders in auction. The decree holder filed an application to reduce the upset price. The said application was dismissed by the court

below. Without reducing the upset price, again the auction was posted and in the auction, no bidders had turned up. As the upset price was not reduced, the decree holder also did not participate in the auction. It seems through Exhibit P5 order, the court below has dismissed the E.P. by stating that “Not sold. Decree holder did not participate in the auction.”

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

3. Much discussion is not required to conclude that the course adopted by the court below is illegal, irregular and improper. There is no mandate that the decree holder should participate in the auction. It is for the court to conduct the auction. If the decree holder is willing, he will participate and bid in the auction. Especially when the decree holder had a case that no bidders were turned up on the first occasion, as the upset price fixed was too high and especially when there was a request on the part of the decree holder to reduce the upset price, the court below

ought to have considered the request. Instead of it, the court below has fixed the next auction without changing the upset price. That is the reason why the decree holder did not participate in the proceedings.

4. The matter requires reconsideration by the court below. Exhibit P5 is liable to be set aside.

In the result, this Original Petition (Civil) is allowed and Exhibit P5 stands set aside. The court below shall hear the decree holder and consider the matter once again, and fix a proper upset price for enabling the sale of the property. Parties shall appear before the court below on 22.06.2015.

Sd/-

B.KEMAL PASHA
JUDGE