

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 22ND DAY OF JUNE 2015/1ST ASHADHA, 1937

OP(C).No. 823 of 2015 (O)

E.P.167/2014 IN O.S.632/2011 OF PRINCIPAL SUB COURT, IRINJALAKUDA.

PETITIONER(S)/JUDGMENT DEBTORS:

1. DOMINIC, AGED 53, S/O.PULIKKAL THOMAS,
ALLOOR VILLAGE & DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
2. JOSE, AGED 61 YEARS, S/O.ARIKKADAN CHAKKUNNY,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.
3. JOY, AGED 46, S/O.VAZHAPPILLY SEBASTIAN,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.
4. PAULSON, AGED 46, S/O.ARIKKADAN CHAKKUNNY,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.
5. JOSE, AGED 62, S/O.KACHAPILLY KOCHAPPU,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.
6. BABU, AGED 42, S/O.PEREPPADAN GEORGE,
ALLOOR VILLAGE & DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
7. VINOD, AGED 39, S/O.THRIPPALLAPURATH THANKAPPAN,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.
8. JAISON, AGED 43, S/O.VAZHAPILLY PAULOSE,
ALLOOR VILLAGE & DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT.
9. SOMAN, AGED 49, S/O.MANAKKADAN JANARDHANAN,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT.

BY ADV. SRI.A.C.DEVY

RESPONDENT(S)/DECREE HOLDERS:

1. SANEESH, AGED 27,
S/O.BHAGABVATH SINGH, NELLISSERY HOUSE,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT- 680 683.
2. SHAJU, AGED 39, S/O.KUNJIPALU, CHATHELI HOUSE,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT - 680 683.
3. ANTO, AGED 46, S/O.LONAKKUTTY,
ARIKKADAN HOUSE, ALOOR VILLAGE & DESOM,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT - 680 683.
4. MANI, AGED 40, S/O.SIDHARTHAN,
THALAYANA VELIKKAKATH HOUSE,
ALLOOR VILLAGE & DESOM, MUKUNDAPURAM TALUK,
THRISSUR DISTRICT- 680 683.

R2-R4 BY ADVS. SRI.G.SREEKUMAR (CHELUR)
SRI.N.L.BITTO

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 22-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

mbr/

OP(C).No. 823 of 2015 (O)

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1- TRUE COPY OF THE OBJECTION FILED BY THE PETITIONERS IN E.P 167/2014
IN O.S.632/2011.
- P2- TRUE COPY OF THE JUDGMENT DT. 02.06.2011 IN O.S.NO.425/2010.
- P3- TRUE COPY OF THE DECREE DT. 02.06.2011 IN O.S.NO.425/2010.
- P4- TRUE COPY OF THE AWARD OF THE LOK ADALATH DT. 02.11.2012.
- P5- TRUE COPY OF THE E.P NO.167/14 IN O.S. 632/2011 DT. 21.05.2014.
- P6- TRUE COPY OF THE PROCEEDING IN E.P NO.167/2014 IN O.S. 632/2011.

RESPONDENTS' EXHIBITS: **NIL.**

//TRUE COPY//

P.S. TO JUDGE

mbr/

B.KEMAL PASHA, J.

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O.P.(C). No.823 of 2015

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Dated this the 22nd day of June, 2015

J U D G M E N T

All the respondents appear. Service is treated as complete. Exhibit P6 order issuing warrant in the execution of a decree is under challenge. Exhibit P4 order says:

“No evidence seen adduced. Heard. Means of Judgment debtors 1 to 9 proved. Issue warrant to Judgment debtors 1 to 9. Take steps within 3 days.”

2. Much discussion is not required to conclude that the course adopted by the court below in passing Exhibit P6 order is patently illegal. It seems that the court below has not stated as to how the court below could find that the petitioners have sufficient means to pay off the decree debt in lump.

3. Whether there is challenge or not from the part of

the judgment debtors, it is the duty of the court to record evidence regarding means and to arrive at a finding that the judgment debtors have means to pay off the decree debt in lump. In case, there is no such evidence, the order under challenge cannot be sustained. Exhibit P6 order is not sustainable and the same is liable to be set aside.

In the result, this Original Petition (Civil) is allowed. Exhibit P6 order is set aside. The court below is directed to consider the question of means of the judgment debtor, for which, the decree holders have to adduce evidence. The court below shall consider the matter afresh and pass appropriate orders in accordance with law.

Sd/-

B.KEMAL PASHA
JUDGE