

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

OP(C) .No. 72 of 2014 (O)

E.A.NO.139/2012 IN E.P.NO.67/2009 IN O.S.NO.32/2007 OF THE
SUBORDINATE JUDGE'S COURT, KATTAPPANA

PETITIONER/PETITIONER:

VINOD,
S/O.APPU, KANJIRATHUMMOOTTIL, KUZHITHOLU P.O.
POTHINKANDAM, KARUNAPURAM VILLAGE.

BY ADV. SRI.K.S.ARUN KUMAR

RESPONDENTS/RESPONDENT/DECREE HOLDER AND JUDGMENT DEBTORS 1-
3 & 5-7:

1. K.KANNAN,
D.NO.8/1, N.K.NAGAR, P AND T COLONY,
GANNDAPALAYAM, COIMBATORE, TAMILNADU, PIN - 641 001.

2. K.N.THANKAPPAN,
S/O.N.NARAYANAN, NIRAPPURAYIDATHIL,
KIZHAKKUMMEDU BHAGOM, KUMILY VILLAGE,
IDUKKI DISTRICT, PIN - 685 509.

3. THANKAMMA,
D/O.N.NARAYANAN, NIRAPPURAYIDATHIL,
KIZHAKKUMMEDU BHAGOM, KUMILY VILLAGE,
IDUKKI DISTRICT, PIN - 685 509.

4. KAMALAMMA,
D/O.N.NARAYANAN, NIARAPPURAYIDATHIL,
KIZHAKKUMMEDU BHAGOM, KUMILY VILLAGE,
IDUKKI DISTRICT, PIN - 685 509

5. CHANDRAMMA,
D/O.N.NARAYANAN, NIRAPPURAYIDATHIL,
KIZHAKKUMMEDU BHAGOM, KUMILY VILLAGE,
IDUKKI DISTRICT PIN -685 509.

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6. RAJAPPAN,
S/O.N.NARAYANAN, NIRAPPURAYIDATHIL,
KIZHAKKUMMEDU BHAGOM, KUMILY VILLAGE,
IDUKKI DISTRICT, PIN - 685 509.

7. SOMANATHAN,
S/O.N.NARAYANAN, NIRAPPURAYIDATHIL,
KIZHAKKUMMEDU BHAGOM, KUMILY VILLAGE, IDUKKI DISTRICT,
PIN -685 509.

R1 BY ADVS. SRI.GEORGE THOMAS (MEVADA) (SR.)
SRI.MANU GEORGE KURUVILLA
SRI.AMAL GEORGE

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

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APPENDIX

PETITIONER'S EXHIBITS :

EXT.P-1: COPY OF THE JUDGMENT DTD 8.4.2009 IN O.S 32/2007
ON THE FILES OF THE SUBORDINATE JUDGES COURT, KATTAPPANA.

EXT.P-2: COPY OF THE DEATH CERTIFICATE DTD 22.6.2010.

EXT.P-3: COPY OF THE ORDER DTD 15.3.2011 IN EP 67/2009 IN
O.S. 32/2007 ON THE FILES OF THE SUBORDINATE JUDGES COURT,
KATTAPPANA.

EXT.P-3(A): COPY OF THE PROCLAMATION OF SALE.

EXT.P-4: COPY OF THE PETITION DTD 15.10.2012 IN
E.A.139/2012 IN EP 67/2009 IN OS 32/2007 ON THE FILES OF THE
SUBORDINATE JUDGES COURT, KATTAPPANA.

EXT.P-5: COPY OF THE ORDER DTD 28.11.2013 IN EA 139/2012
IN EP 67/2009 IN OS 32/2007 ON THE FILES OF THE SUBORDINATE
JUDGES COURT, KATTAPPANA.

RESPONDENTS' EXHIBITS :

EXT.R1A COPY OF JUDGMENT IN O.P(C)NO.3003 OF 2011 DATED
27.09.2011.

EXT.R1B COPY OF ORDER PASSED BY SUB JUDGE, KATTAPANA IN
E.A.145/11 IN EP 67/09 IN OS 32/07 DATED 11.11.2011.

EXT.R1C COPY OF ORDER IN FAO 346/2011 DATED 02.01.2012.

EXT.R1D COPY OF JUDGMENT IN FAO346/2011 DATED 30.03.2012.

EXT.R1E COPY OF ORDER PASSED BY LEARNED SUB JUDGE, KATTAPANA
IN EA 71/12 IN EP 67/09 DATED 21.07.2012.

EXT.R1F COPY OF ORDER PASSED BY LEARNED SUB JUDGE, KATTAPANA
IN EA 90/12 IN EP 67/09 DATED 07.08.2012.

EXT.R1G COPY OF ORDER IN OP(C)2844/2012 DATED 11.09.2012.

EXT.R1H COPY OF JUDGMENT IN OP(C)2844/2012 DATED 11.09.2012.

// True Copy //

B.KEMAL PASHA, J.

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O.P.(C).No.72 of 2014

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Dated this the 7th day of August, 2015

J U D G M E N T

The proceedings in delivery in execution of a decree are sought to be challenged. Exhibit P5 order is under challenge. According to the petitioner, his mother was the 4th judgment debtor in E.P.No.67 of 2009 and that the 4th judgment debtor had died even prior to the settlement of proclamation for sale. It is also the case of the petitioner that the decree holder had sufficient knowledge regarding the death of the 4th judgment debtor and even then deliberately steps were not taken by the decree holder to implead the legal representatives of 4th judgment debtor. According to the petitioner, on that sole ground itself, the sale is vitiated and the sale has to be declared as null and void. The court below has dismissed E.A.No.139 of 2012

filed by the petitioner to that effect, through Exhibit P5 order.

2. Heard the learned counsel for the petitioner and the learned counsel for the decree holder. The decree was passed on 08.04.2009. It is a decree passed for the return of the advance money. The decree amount is Rs.41,25,000/- with 12% interest and cost. As the amount covered by the decree was not discharged, the decree was put in execution through E.P.No.67 of 2009. All sorts of resistances were caused to the execution of decree. The E.P. amount was Rs.62,52,457/- along with future interest. No amount was paid. The proclamation was settled and ultimately the property was put to sale. Even though the total extent of the property is 96 cents, an extent of 15 cents of property alone, was put to sale. Unsuccessfully, claim petitions were filed. On the dismissal of those claim petitions, the matter was taken up before this Court through F.A.O.No.346 of 2011. Through Exhibit R1(C) order, a Division Bench of this Court recorded the submission made by the learned counsel for the appellants that the appellants would deposit a sum of

Rs.68,00,000/- being the principal amount plus interest and costs. In spite of the objections of the respondents, the Division Bench of this Court granted time to the appellants till 01.03.2012 for deposit of the amounts. The deposit was not made. On 30.03.2012, the learned counsel for the appellants did not press the appeal and consequently the appeal was dismissed. The aforesaid 4th judgment debtor is the 4th appellant in F.A.O. No.346 of 2011. It seems that even at the time of filing the appeal, the other appellants had not disclosed that the 4th judgment debtor, who is the 4th appellant in the F.O.A. was no more. The appeal was filed as if the 4th appellant was alive.

3. Again E.P. was proceeded with. Once again E.A.No.71 of 2012 was filed in E.P. by the judgment debtors including the 4th judgment debtor seeking the permission of the court below for the deposit of the amount as ordered by this Court. In the meantime, the sale was confirmed and E.P. was closed after confirmation of the sale and issue of sale certificate. Therefore, the court below, through Exhibit

R1(E) order, dismissed the said E.A. The decree holder, who is the auction purchaser, filed E.A.No.90 of 2012 seeking delivery. The same was not objected to, and delivery was ordered through Exhibit R1(F) order on 07.08.2012.

4. Thereafter, the judgment debtors including the 4th judgment debtor filed O.P.(C)No.2844 of 2012 before the Division Bench of this Court by expressing their willingness to settle the transaction by paying the amounts due. Through Exhibit R1(G) order dated 11.09.2012, the Division Bench of this Court had directed the petitioners to produce fixed deposit receipt for an amount of Rs.75,00,000/- in order to show the *bona fides* and earnestness of the said submission of the petitioners. Such a fixed deposit receipt was not produced. Consequently, vide Exhibit R1(H) judgment dated 24.09.2012, the Division Bench of this Court dismissed the Original Petition.

5. The aforesaid facts are self speaking to the conduct of the judgment debtors. The argument of the petitioner is

that even though his mother had died, he was not impleaded, and he was not made known about the execution proceedings and therefore, the sale is null and void. The argument is that when the 4th judgment debtor had died even prior to the settlement of proclamation, the sale, which was made is null and void. As detailed above, a series of proceedings were there by the other siblings of the 4th judgment debtor as well as the 4th judgment debtor. Even after her so called death, cunningly the other judgment debtors, who are none other than the siblings of the deceased 4th judgment debtor, had concealed the factum of death. It seems that such a dead person had repeatedly filed E.As before the court below as well as Original Petitions before this Court and had sought for orders. The question to be considered is whether the petitioner, being the son of the deceased 4th judgment debtor, is put to any prejudice because of the sale conducted in the case without him on record as the legal representative of deceased 4th judgment debtor.

6. Learned counsel for the decree holder has pointed out that there is a total extent of 96 cents of property over which the 4th judgment debtor and the other judgment debtors had joint right. They were tenants in common in respect of the property. There were seven persons including the 4th judgment debtor, who are entitled to the property and thereby the share at the most of the 4th judgment debtor over the 96 cents of property was only 1/7. What was sold in execution is 15 cents of property out of the total extent of 96 cents of property. In such case, it cannot be said that the petitioner is put to any prejudice on account of the said sale.

7. Especially when the other brothers and sisters of the 4th judgment debtor had not revealed the factum of death of the 4th judgment debtor and they continued to participate in the proceedings and continued to cause hindrance and obstructions to the execution, it cannot be said that the petitioner was not in the know how of the execution proceedings. Even after the so called death of the 4th judgment debtor several proceedings were filed

before the court below as well as before this Court for and on behalf of the 4th judgment debtor, as if she were alive. In such a context, it cannot be said that the petitioner is put to any prejudice on account of the sale. At any stretch of imagination, it cannot be said that the right of the petitioner over the total extent of property through his mother is affected on account of the sale. The mother of the petitioner was entitled to 1/7 shares over the 96 cents property. Therefore, even if there is want of notice on the petitioner being the legal representative of the deceased 4th judgment debtor, the same will not make the sale null and void. Matters being so, this Original Petition (Civil) is devoid of merits and it is only to be dismissed, and I do so.

In the result, this Original Petition (Civil) is dismissed.

Sd/-

B.KEMAL PASHA
JUDGE