

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

OP(C).No. 1477 of 2015 (O)

E.A.NO.145/2014 IN E.P.NO.156/2011 IN O.S.NO.63/2006 OF SUB
COURT, NEYYATTINKARA

PETITIONER :

VINCENT, AGED 42 YEARS,
S/O.PONNU NADAR, HARITHA, MANNAMKONAM,
KARIKKAMAMKODU DESOM, VELLARADA VILLAGE.

BY ADV. SRI.R.GOPAN

RESPONDENTS:

1. JAYA KUMAR,
S/O.ENOS NADAR, PUSHPA VILASAM BUNGLOW, CHARUMKUZHI,
VELLARADA VILLAGE, VELLARADA DESOM-695 001.

2. SAMSTERSON, S/O.THAPASIMUTHU NADAR,
'YEDON' PONNAMBI, VELLARADA VILLAGE,
NEYYATTINKARA TALUK,
THIRUVANANTHAPURAM-695 001.

3. MUHAMMAD KALAM NAZAR,
S/O.SAINUDEEN, AATTUKAL SAVITHA COTTAGE,
CHULLIMANOR DESOM, PANAVOOR VILLAGE,
NEDUMANGAD TALUK-695 001.

4. THE FEDERAL BANK LIMITED
REPRESENTED BY ITS BRANCH MANAGER, PONGUMOODU BRANCH,
PONGUMOODU, THIRUVANANTHAPURAM, PIN: 695 011.

R1 BY ADV. SRI.R.T.PRADEEP

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION
ON 19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/20/8/15

OP(C) .No. 1477 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

P1: COPY OF THE SALE DEED NO.69/07 DATED 10/1/2007 EXECUTED BY THE 3RD RESPONDENT IN FAVOUR OF THE PETITIONER.

P2: COPY OF E.P NO.156/2011 IN OS NO.63/2006 BEFORE THE SUB COURT, NEYYATTINKARA.

P3: COPY OF SALE PROCLAMATION SCHEDULE FILED BY THE 1ST RESPONDENT/DECREE HOLDER IN E.P NO.156/2011 BEFORE THE SUB COURT, NEYYATTINKARA.

P4: COPY OF CERTIFICATE DATED 30/3/2013 ISSUED BY THE TAHSILDAR, NEYYATTINKARA.

P5: COPY OF OBJECTION FILED BY THE PETITIONER IN EP NO.156/2011 IN OS NO.63/2006 DATED 16/8/2014 BEFORE THE SUB COURT, NEYYATTINKARA.

P6: COPY OF E.A NO.145/2014 IN E.P NO.156/2011 IN OS NO.63/2006 BEFORE THE SUB COURT, NEYYATTINKARA.

P7: COPY OF ORDER DATED 10/4/2015 IN EA NO.145/2014 IN EP NO.156/2015 IN OS NO.63/2006 OF THE SUB COURT, NEYYATTINKARA.

RESPONDENTS' EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/20/8/15

B.KEMAL PASHA, J.

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O.P.(C). No.1477 of 2015

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Dated this the 19th day of August, 2015

J U D G M E N T

The proclamation for sale of the properties is under challenge. The execution is in respect of a compromise decree. As per the compromise decree, the 1st defendant in the suit had to pay the decree holder, an amount of ₹ 5,00,000/- as the 1st instalment and an amount of ₹ 3,50,000/- more within a period of six months from the date of decree, as the second instalment. Further, the 3rd defendant, who had purchased the property from the 2nd defendant had to pay an amount of ₹1,25,000/- to the decree holder.

2. The 1st instalment was paid by the 1st defendant and

an amount of ₹1,25,000/- has been paid by the 3rd defendant. What remains is the payment of an amount of ₹ 3,50,000/- with interest by the 1st defendant. A provision has been made in the decree that in case, the amounts are not paid as per decree, the 10 cents of property out of the property presently owned by the 3rd defendant and the building thereon shall be put to sale for recovery of the amount.

3. On a valuation of the property, it was found that only the sale of one Are of property and the building coming within it, is sufficient to meet the decree for the balance amount. When that was put to sale, that has been challenged by the 3rd defendant mainly on the ground that the property was the subject matter of a mortgage with the bank and the charge of the bank has not been stated in the proclamation. Presently, a fresh proclamation is required in the matter. Matters being so, the court below shall proclaim afresh the sale of adequate extent of property and the

buildings thereon, so as to meet the claim of the present decree holder as well as the claim of the bank.

4. With the said observation, this Original Petition (Civil) is disposed of. The court below shall make every endeavour to have an expeditious disposal of the proceedings, for enabling the unfortunate decree holder to get his amount.

Sd/-

B.KEMAL PASHA
JUDGE

DSV/19/8/15