

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

FRIDAY, THE 31ST DAY OF JULY 2015/9TH SRAVANA, 1937

OP(C).No. 4137 of 2013 ()

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AGAINST THE ORDER/JUDGMENT IN OS 119/2011 of M.C.,PATHANAMTHITTA

PETITIONER:

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V.S.VIJAYAKUMAR, AGED 59 YEARS,  
S/O.SUKUMARAN ACHARY, VINOD BHAVAN, CHENNEERKARA MURI,  
CHENNEERKARA VILLAGE, KOZHENCHERRY TALUK,  
PATHANAMTHITTA DISTRICT.

BY ADVS.SRI.K.SHAJ  
SRI.SAJJU.S

RESPONDENT:

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CHAKKALAMANNILCHITTY FUND,  
REPRESENTED BY ITS MANAGING PARTNER, REJI.C.MATHEW,  
THUMPAMON NORTH, KOZHENCHERRY TALUK,  
PATHANAMTHITTADISTRICT-689 641.

R BY ADVS. SRI.ROY THOMAS  
SRI.P.V.PAULSON

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-07-2015, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

DG

OP(C).No. 4137 of 2013 ()  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS:**  
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**EXT.P1:        THE TRUE COPY OF SALE PROCLAMATION DATED 27/11/2013 ISSUED  
                 BY MUNSIFF'S COURT,PATHANAMTHITTA IN E.P.7/2012 IN O.S.119/2011.**

**EXT.P2:        THE TRUE COPY OF E.A.66/2013 IN E.P.NO.7/2012 IN O.S.119/2011  
                 BEFORE THE MUNSIFF'S COURT,PATHANAMTHITTA.**

**EXT.P3:        TRUE COPY OF DISCHARGE SUMMARY ISSUED TO THE PETITIONER  
                 BY THE DEPARTMENT OF CARDIOLOGY, PANDALAM.**

**RESPONDENT(S)' EXHIBITS -        NIL**  
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**//TRUE COPY//**

**P.A TO JUDGE**

**SUNIL THOMAS, J.**

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O.P.(C).No.4137 of 2013  
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Dated this the 31<sup>st</sup> day of July, 2015

**J U D G M E N T**

1. The sole judgment debtor has approached this Court seeking stay of the execution proceedings in E.P.No.7/12 in O.S.No.119/11 of the Munsiff's Court, Pathanamthitta, on an apprehension that the court will proceed with the execution of the decree without considering exhibit P2 application.
2. The respondent/decreed holder initiated execution proceedings. It appears that the court below settled the proclamation and thereafter posted for sale to 27.11.2013. In the meanwhile, E.A.No.66/13 was filed by the judgment debtor requesting the court below to conduct an enquiry as to whether one cent of land belonging to the judgment debtor will be sufficient to satisfy the decree debt.
3. Heard both sides.
4. Evidently, the execution court is obliged to consider the question as to whether the entire property is to be sold or the decree can

be satisfied by the sale of a portion of the property. However, this is an objection which should have been raised before the settlement of proclamation. However, In the light of the above, the further continuance of this original petition, with a stay granted thereon, does not appear to be in the interest of justice. Hence, the original petition is disposed of with a direction that, before the proceeding for sale, the court shall give an opportunity to the judgment debtor to satisfy the court as to whether a portion of the property can be sold in execution of the decree to satisfy the whole decree amount, with an opportunity to the decree holder to controvert the above contention. The court if so feels can grant both sides to let in evidence as they wish. It is clarified that in the event of the above objection being sustained, the court shall proceed to settle proclamation accordingly, afresh. If the objection is overruled, court can proceed with the same proclamation and treat the right of the judgment debtor to have fresh proclamation waived.

The original petition is disposed of as above.

Sd/-  
**(SUNIL THOMAS, JUDGE)**

//TRUE COPY//

P.A TO JUDGE

DG