

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.ABRAHAM MATHEW

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

OP(C).No. 2589 of 2015 (O)

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AGAINST THE ORDER/JUDGMENT IN OS 232/1997 of PRINCIPAL SUB
COURT, ATTINGAL
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PETITIONER(S):

**S.BABU AGED 41 YEARS
S/O K.V. SIVANANDAN, AMBIKA VILASOM, PUNNAMMOODU
VARKALA, THIRUVANANTHAURAM**

**BY ADVS.SRI.M.BALAGOVINDAN
SRI.T.KANANDA PADMANABHAN**

RESPONDENT(S):

**1. MUTHOOT LEASING AND FINANCING LIMITED
NOW KNOWN AS MUTHOOT VEHICLE AND ASSET FINANCE LTD
MUTHOOT CHAMBERS, 2ND FLOOR, OPPOSITE SARITHA THEATRE
COMPLEX, BANERJI ROAD, ERNAKULAM COCHIN-682 018
REPRESENTED BY ITS MANAGING DIRECTOR
GEORGE ALEXANDER
MUTHOOT THROUGH HIS POWER OF ATTORNEY HOLDER JITHIN RAJ
BUSINESS DEVELOPMENT EXECUTIVE
MUTHOOT VEHICLE AND ASSET FINANCE LIMITED
PATTOM THIRUVANANTHAPURAM**

**2. E.A JABBAR
S/O IBRIMKUTTY, SURAJ KUMAR COTTAGE, NEAR PWD
VARKALA, THIRUVANANTHAPURAM-695 324**

**3. NAVEEN S. PATEL
S/O SIVAJI PATEL, RESIDING AT DOOR NO. 6/1
VALLAM ROAD, ELANJI VILLAGE, THENKASI
THENKASI TALUK-5513210**

R1 BY ADV. SRI.C.S.MANILAL

**THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 28-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P1: TRUE COPY OF THE JUDGMENT IN OS 232/97 DT. 12/8/04

EXT.P2: TRUE COPY OF THE EP 118/10 DT. 26/11/10

**EXT.P3: TRUE COPY OF THE ATTACHMENT"KAICHIT" IN RESPECT OF THE
PROPERTY AND BUILDING OF THE PETITIOENR**

EXT.P4: TRUE COPY OF THE OBJECTION DT. 19/11/14

EXT.P5: TRUE COPY OF THE REPLY DT.8/6/15

EXT.P6: TRUE COPY OF THE ORDER IN EP 118/10 IN OPS 232/97 D. 25/9/15

**EXT.P7: TRUE COPY OF THE ORDER OF PRINCIPAL SUB COURT, THENKASI IN EA
1302/10 IN EP 61/2009 IN OS 232/97 DT. 12/4/11**

EXT.P8: TRUE COPY OF THE ORDER APPEAL IN CMA 17/15

EXT.P8(A): ENGLISH TRANSLATION OF TAMIL PORTION

EXT.P9: TRUE COPY OF THE PROCLAMATION AND SALE NOTICE

RESPONDENT(S)' EXHIBITS

NIL

R.AV

//True Copy//

PA to Judge

K. ABRAHAM MATHEW, J.

O.P.(C).No.2589 of 2015

Dated this the 28th day of October, 2015

J U D G M E N T

Petitioner is the one of the judgment debtors in O.S.239 of 1997 of Sub Court, Thiruvananthapuram. On the application of the respondent/deGREE holder, the decree was transferred to Sub Court, Thenkasi, in which the decree holder filed an EP. In execution of the decree the property of the other judgment debtor was sold for Rs.4,42,000/- (Rupees Four lakhs forty two thousand only) on 17.9.2010. Still there was a balance of about Rs23,00,000/- (Rupees twenty three laks only). So the decree holder filed EP 118 of 2010 in Sub Court, Attingal to which the decree was transferred by the Sub Court, Thiruvananthapuram. This O.P has been filed on the allegation that there was non compliance with Section 41 of C.P.C and the decree holder has suppressed the fact that the execution proceedings in the Sub Court, Thenkasi is still pending.

2. Heard the learned counsel for the petitioner.

3. Section 41 of CPC is applicable only when the execution proceedings in the executing court are closed.

Going by the submission of the learned counsel the execution proceedings in the Sub Court, Thenkasi are still pending. So there is no question of complying with Section 41 of C.P.C.

4. It is submitted that the proceedings in the Sub Court, Thenkasi was "re-opened". Merely because an EP is pending in Sub Court, Thenkasi the proceedings in Sub Court, Attingal cannot be stayed. There is no illegality in executing a decree in different courts simultaneously. I do not find any merit in this O.P.

In the result, this O.P is dismissed.

sd/-
K. ABRAHAM MATHEW
JUDGE

R.AV

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PA to Judge