

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

OP(C) .No. 2097 of 2014 (O)

E.A.NO.268/13 IN EP 66/09 IN OS133/2000 OF SUBORDINATE JUDGE'S
COURT, KOTTARAKKARA

E.A.NO.91/14 AND EA92/2014 IN EP 66/09 IN OS133/2000 OF
SUBORDINATE JUDGE'S COURT, KOTTARAKKARA

PETITIONER :

RAMANUJAN PILLAI,
S/O. CHELLAPPAN PILLAI, ALUMVILAKIZHAKKATHIL VEEDU,
VETTIKKAVALA P.O., MELILA VILLAGE, KOTTARAKARA TALUK,
KOLLAM.

BY ADVS.SRI.SHABU SREEDHARAN
SRI.C.G.SALIM
SRI.UDAYAKUMAR SREEDHARAN
SRI.B.BALA PRASANNAN
SMT.RESHMA ABDUL RASHEED

RESPONDENT :

LEELAMONEY,
D/O. SARASAMMA, MANGALATHU PUTHENVEEDU VEEDU,
KARIKKAMITTAM MURI, VETTIKKAVALA VILLAGE,
KOTTARAKKARA TALUK, KOLLAM-691 506.

BY ADV. SRI.K.V.ANIL KUMAR

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

DSV/24/8/15

OP(C) .No. 2097 of 2014 (O)

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1- COPY OF THE ORDER IN EA NO. 268/13 DATED
13-2-2014.

EXHIBIT P2- COPY OF THE COMMON ORDER IN EA NOS. 92/2014 AND
91/2014 DATED 10-7-2014.

EXHIBIT P3- COPY OF THE ORDER IN EP NO. 66/2009 DATED 10-7-
2014.

EXHIBIT P4- COPY OF THE DEPOSITION OF THE RESPONDENT IN OS
NO. 133/2000 DATED 21-3-2009.

EXHIBIT P5- COPY OF THE DEPOSITION OF PW2 DATED 22-1-2014.

EXHIBIT P6- COPY OF THE JUDGMENT IN O.S.NO.133/2000 PASSED BY
THE SUB COURT, KOTTARAKARA DATED 31.03.2009.

EXHIBIT P7- COPY OF THE EXECUTION APPLICATION IN EA
NO.268/2013 IN EP NO.66/2009.

EXHIBIT P8- COPY OF THE EXECUTION APPLICATION IN EA 92/2014
IN EP 66/2009.

EXHIBIT P9- COPY OF THE EXECUTION APPLICATION IN EA 91/2014 IN
EP66/2009.

RESPONDENT'S EXHIBITS :

NIL

// True Copy //

P.A. To Judge

DSV/24/8/15

B.KEMAL PASHA, J.

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O.P(C). No.2097 of 2014

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Dated this the 12th day of August, 2015

J U D G M E N T

A money decree was put in execution. In a suit for specific performance of a contract, Exhibit P6 decree was passed allowing the alternate relief for the return of the advance money. The decree was passed on 31.03.2009. The amount has not been paid. The decree was put in execution.

2. The judgment debtor is a woman. She has 5 cents of property and a building thereon, which is the subject matter of the agreement for sale in respect of the very same suit. At the same time, it seems that a charged decree has not been passed in the matter.

3. The decree was put in execution. The judgment debtor contended that she is entitled to the protection of Section 60(1)(c) CPC, as the property in question is a residential house and land immediately appurtenant thereto

and necessary for the enjoyment of the house, and she being a domestic servant.

4. The decree holder has contended that the judgment debtor is not a domestic servant and therefore, she is not entitled to the protection of Section 60(1)(c) CPC. Over and above it, the decree holder has gone to the extent of filing two E.As as E.A.No.91 of 2014 and E.A.No.92 of 2014 in E.P for appointing a Commissioner to measure out the property and to separate 2 cents of property out of the 5 cents, after leaving the house as well as the pathway to the house and to separate the said 2 cents of property, so as to conduct sale of the said 2 cents in order to meet the decree. The court below has dismissed the said E.As through Exhibit P2 order. At the same time, the court below has upheld the argument put forwarded by the judgment debtor that she is a domestic servant and therefore, the property is not liable to be sold.

5. The impugned orders passed by the court below

clearly reveal utter perversity. The suit in question was one relating to an agreement for sale of the property. It was the alternate relief for the payment of advance money, that was granted through the decree. In that case, the judgment debtor cannot be heard to say that she is entitled to the protection of Section 60(1)(c) CPC.

6. Apart from the above, it seems that Exhibit P4 deposition of the judgment debtor before the court below in the suit clearly shows that she is a Home Nurse. According to the decree holder, the judgment debtor is working as a Nurse in a private hospital. The judgment debtor herself as defendant in the suit has in her deposition clearly mentioned her employment as Home Nurse. Section 60(1)(c) CPC deals with such a property belongs to a domestic servant. A Home Nurse cannot be treated as a domestic servant. In such case, the court below ought not to have extended such a benefit to the present judgment debtor.

7. It seems that the other two E.As were filed by the

decree holder quite unnecessarily. Even when the decree holder was ready to limit his claim for sales to an extent of 2 cents of property, out of the 5 cents, after leaving the house and the pathway to the house, the court below ought to have extended at least such a benefit to the decree holder. It seems as if the court below has made a research as to how the fruits of the decree could be denied to a poor litigant who had obtained a decree. Exhibits P1 to P3 are illegal, irregular and perverse. The said orders are totally erroneous.

In the result, this Original Petition (Civil) is allowed and Exhibits P1 to P3 are set aside. E.P. is restored. The court below is directed to proceed with the execution proceedings through the sale of the said property and the building, in accordance with law.

Sd/-

B.KEMAL PASHA
JUDGE