

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

THURSDAY, THE 16TH DAY OF JULY 2015/25TH ASHADHA, 1937

OP(C).No. 2120 of 2014 (O)

EP NO. 54/2014 IN OS.NO. 160/2007 OF SUB COURT, OTTAPPALAM

PETITIONER(S) :

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1. MOIDEENKUTTY
S/O. P.K. KUNNAHAMMED, AGED 32 YEARS
PULIKKAL HOUSE, KODUMUNDA P.O.
PATTAMBI, OTTAPALAM TALUK,
PALAKKAD DISTRICT.
 2. P.CHEKAMMU,
S/O. P. MUHAMMED, AGED 45 YEARS
PULIKKAL HOUSE, KODUMUNDA P.O.
PATTAMBI, OTTAPALAM TALUK,
PALAKKAD DISTRICT.
 3. AYSHAKUTTY,
W/O. P.K. KUNNAHAMMED, AGED 71 YEARS
PULIKKAL HOUSE, KODUMUNDA P.O.
PATTAMBI, OTTAPALAM TALUK,
PALAKKAD DISTRICT.

BY ADV. SRI.K.RAVI (PARIYARATH)

RESPONDENT :

THE MANAPPURAM ASSET. FINANCE LTD.,
REP. BY ITS MANAGING DIRECTOR
MRS. JYOTHIPRASANNAN, W/O. P.D. PRASANNAN
PUZHAKEKADAVIL HOUSE, CIVIL LINES ROAD
THRISSUR-680 001.

BY ADVS. SRI.V.B.UNNIRAJ
SMT.R.S.GEETHA
SMT.P.ANITHA

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 16-07-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

Mn

...2/-

OP(C).No. 2120 of 2014 (O)

APPENDIX

PETITIONERS' EXHIBITS :

- EXT. P1. TRUE COPY OF THE EXECUTION PETITION PREFERRED AT THE
INSTANCE OF THE RESPONDENT HEREIN AS E.P. NO. 54/2014 IN O.S.
NO. 160/07 ON THE FILE OF THE SUB COURT, OTTAPALAM
DATED 21-1-14.
- EXT. P2. TRUE COPY OF THE OBJECTIONS PREFERRED AT THE INSTANCE OF
THE PETITIONERS HEREIN IN E.P. NO. 54/2014 IN O.S. NO. 160/07 ON
THE FILE OF THE SUB COURT, OTTAPALAM DATED 21-6-2014.
- EXT. P3. TRUE COPY OF THE SALE PROCLAMATION DRAWN IN E.P. NO. 54/2014
IN O.S. NO. 160/07 ON THE FILE OF THE SUB COURT, OTTAPALAM
DATED 5-7-14.
- EXT. P4. TRUE COPY OF THE COURT PROCEEDINGS IN E.P. NO. 54/2014 IN
O.S. NO. 160/07 ON THE FILE OF THE SUB COURT, OTTAPALAM DATED
6-8-14.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

B. KEMAL PASHA, J.

.....
O.P.(C) No.2120 of 2014
.....

Dated this the 16th day of July, 2015

J U D G M E N T

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Heard learned counsel for the petitioner and learned counsel for the respondent.

2. A charged decree has been passed for recovery of money based on an agreement for sale supported by a pro note. It seems that precisely, it was a suit for money. At the same time, when the decree was passed, it was passed as a charged decree. It seems that 30 cents of property was scheduled in the decree. The decree amount comes around ₹12 lakhs.

3. According to the learned counsel for the petitioner, the sale of the entire property is not required to

meet the decree debt.

4. *Per contra*, the learned counsel for the respondent has contended that the property is situated in a remote village and it will not fetch more than ₹10 lakhs. It seems that without having a proper discussion, the court below has passed an order on 03.07.2014 through Ext.P4 by taking the view that the decree being a charged decree, the entire property has to be put to sale.

5. The court below has lost sight of the decision in ***Kuruvilla v. Corporation Bank [2008 (1) KLT 604]***, wherein it was clearly held that Rule 66(2)(a) of Order XXI CPC will apply even in the case of a charged decree. It is for the execution court to apply its mind and decide whether it is necessary to bring the whole property to sale for the recovery of the decree debt. The order passed by the court below on 03.07.2014 is liable to be set aside.

In the result, this O.P.(C) is allowed. The order passed by the court below on 03.07.2014 is set aside. The court

below shall consider the counter filed by the petitioner herein and hear both sides and pass appropriate orders in accordance with law, within a period of two months from the date of receipt of a copy of this judgment.

Sd/-
(B.KEMAL PASHA, JUDGE)

aks/16/07

// True Copy //

PA to Judge