

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

MONDAY, THE 1ST DAY OF JUNE 2015/11TH JYAISHTA, 1937

OP(C).No. 2766 of 2014 ()

**AGAINST THE JUDGMENT AND DECREE IN OS 146/2014 of PRINCIPAL SUB COURT,
PALAKKAD.**

PETITIONER:

**PADMINI, AGED 63 YEARS,
W/O. LATE M.K.KRISHNANKUTTY, PADMASREE,
KINAVALOOR AMSOM, PARLI VILLAGE, PALAKKAD TALUK.**

**BY ADVS.SRI.M.V.BOSE.
SRI.VINOD MADHAVAN.
SMT.NISHA BOSE.**

RESPONDENTS:

**1. C.A.ABRAHAM, AGED 59 YEARS,
S/O. C.M.ABRAHAM, CHEMARIKADU VEEDU, SHORNUR,
PARTNER, SHORNUR GENERAL FINANCE, OTTAPALAM TALUK,
PALAKKAD DISTRICT (DIED)**

**2. MERY ALIAS GEETHA ABRAHAM,
W/O. C.A.ABRAHAM, MANAGING PARTNER,
SHORNUR GENERAL FINANCE, SHORNUR, OTTAPALAM TALUK,
PALAKKAD DISTRICT.**

R2 BY ADV. SRI.P.K.MOHANAN(PALAKKAD).

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 01-06-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:**

OP(C).No. 2766 of 2014 ()

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1- TRUE COPY OF THE ORDER SHEET IN E.P. 12/03 IN O.S.146/2001 ON THE FILE OF PRINCIPAL SUBORDINATE JUDGE'S COURT, PALAKKAD WITH REPORT OF AMIN.

EXHIBIT P2- CERTIFIED COPY OF THE ORDER DATED 27-09-2014 OF THE E.A.NO. 334/2014 IN E.P.NO. 31/08 IN OS.NO. 146/2001 ON THE FILE OF PRINCIPAL SUBORDINATE JUDGE, PALAKKAD.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A TO JUDGE

amk

A.HARIPRASAD, J.

O.P (C) No.2766 of 2014

Dated this the 1st day of June, 2015.

J U D G M E N T

Petitioner challenges Ext.P2 order passed by the Executing Court on E.A No.334/2014 in E.P No.31/2008 in O.S No.146/2001 on the file of the Principal Subordinate Judge's Court, Palakkad.

2. Admitted facts are that a suit had been filed by the respondents against the petitioner and her husband for recovery of money and the suit was decreed as the defendants confessed judgment. Later, the decree was put to execution. Pending the execution petition, the first defendant (husband of the petitioner) died. The impugned order was passed by the executing court in an application under Section 47 C.P.C. According to the petitioner, a car belonging to her was taken away by the decree holders (respondents) and the value of car should be adjusted towards the decree amount and costs. This claim was opposed by the decree holders/respondents contending that they never

took possession of the car nor did they sell it. The court below after an elaborate consideration found that the claim in the petition is not allowable.

3. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

4. Learned counsel for the petitioner submitted that finding of the court below that the disputed car was not taken by the decree holders is incorrect. According to her, on 12-01-2008, the car was forcefully taken by the decree holders and they sold it. Therefore, the petitioner is entitled to get credit of the sale proceeds towards the decree debt. Per contra, learned counsel for the decree holders submitted that they never took possession of the car. The court below held that when Amin went to the property on 7-04-2009, the car was present in the residence of the judgment debtor/petitioner. Learned counsel submitted that this finding happened to be made by the court on an erroneous

reading of Amin's report which shows that he inspected petitioner's premises on 07-04-2004. Whatever that be, there is no material produced before the lower court to show that the respondents ever took possession of the car and they sold it out and thereby realized money. In the absence of any evidence for those facts, the court below cannot be faulted in arriving at the said conclusion.

5. Learned counsel for the petitioner further argued that the property now kept under attachment and sought to be sold belonged to her husband as well. If that be so, the court below shall consider those contentions in the light of the facts presented before it.

6. Learned counsel for the decree holders/respondents contended that the court below has rightly invoked provisions under Order 21 Rule 64 C.P.C and ordered a sale only of the portion of property shown in the execution petition. I find no

illegality or irregularity in the proceedings warranting any interference by this Court. Therefore, the Original Petition is dismissed.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE.**

amk