

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MRS. JUSTICE MARY JOSEPH

MONDAY, THE 26TH DAY OF OCTOBER 2015/4TH KARTHIKA, 1937

OP (FC).No. 331 of 2015 (R)

AGAINST EP No.50/2012 IN OP 538/2009 of FAMILY COURT, PALAKKAD

PETITIONER:

**RAJAGOPAL,
S/O.SUNDARAJAN NAIDU, AGED 50 YEARS,
KORATHODI HOUSE, KADUKKAMKUNNAM,
PALAKKAD TALUK AND DISTRICT.**

BY ADV. SRI.JACOB SEBASTIAN

RESPONDENT:

**KANCHANA
W/O. RAJAGOPAL, AGED 44 YEARS, DOOR NO.98
NEHRU STREET, RAM NAGAR, COIMBATORE, PIN-641 001.**

**BY ADVS. SRI.BINOY VASUDEVAN
SMT.P.G.BABITHA**

**THIS OP (FAMILY COURT) HAVING BEEN FINALLY HEARD ON 26-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

AMG

O.P (FC) No.331/2015.

APPENDIX

PETITIONER'S EXHIBITS

- EXT- P1- TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO THE NOTICE ISSUED IN TERMS OF RULE 66, ORDER 21 CPC IN EP No.50/2012.
- EXT- P2- TRUE COPY OF THE ORDER DATED 18-06-2015 IN EP No.50/2012 OF THE FAMILY COURT, PALAKKAD.
- EXT- P3- TRUE COPY OF THE SALE PROCLAMATION ISSUED IN TERMS OF EXT.P2 ORDER.

RESPONDENT'S EXHIBITS

NIL

True copy

P.A. To Judge

AMG

**C.K. ABDUL REHIM, J.
&
MARY JOSEPH, J.**

O.P (FC) No. 331 OF 2015

DATED THIS THE 26th DAY OF OCTOBER, 2015

J U D G M E N T

C.K. Abdul Rehim, J:

The petitioner is challenging Ext.P2 order passed by the Family court, Palakkad in EP No.50/2012 in OP No.538/2009, dated 18-06-2015, fixing upset price of the property put to sale at Rs.15,50,000/- and ordering proclamation of sale.

2. The petitioner herein is the judgment debtor in OP No.538/2009. The respondent herein is the decree holder. The Family Court had decreed the suit against the petitioner directing payment of maintenance to the respondents. The respondent filed execution application as EP 50/2012 claiming a sum of Rs.2,48,250/- along with interest, towards the arrears of maintenance due from the judgment debtor. The Family Court proceeded with attachment and sale of 54 cents of property belonging to the petitioner, situated in Re-sy No.566 of block No.24 of

Akathethara Village. According to the petitioner, he has submitted Ext.P1 objection to the notice issued under Rule 66 of Order XXI, in which specific contention was taken that there is no necessity to sell the entire property having an extent of 54 cents, in order to meet the claim raised in the execution application. According to the petitioner the property is worth for an amount of Rs.90,000/- per cent and that sale of a portion of the property to the extent of 3 cents would suffice to meet the claim. Grievance of the petitioner is that the Family court had fixed the upset price and proclaimed the sale without considering the objections.

3. Heard; counsel appearing on both side. It is conceded that Ext.P1 objection was filed by the petitioner before settlement of the proclamation. It was obligatory on the part of the Family Court to consider such objections before settling the proclamation. From Ext.P2 it is not evident as to whether the Family Court had taken note of the objections. Further this court takes note of the fact that the claim in the execution petition itself was only to the

extent of Rs.2,48,250/-, whereas the upset price of the property fixed by the Family Court is Rs.15,50,000/-. Therefore it is only just and proper for the Family Court to consider as to whether sale of a portion of the property would be sufficient to meet the EP claims.

4. Under the above mentioned circumstances this original petition is hereby allowed. The settlement of proclamation finalized by the Family Court on 18-06-2015, will stand set aside. The sale proclaimed under Ext.P3 notice which now stands posted on 27-10-2015 (originally fixed as 27-07-2015) was ordered to be deferred through an interim order passed by this court. The Family Court is directed to consider Ext.P1 objections of the petitioner with respect to settlement of proclamation and with respect to fixing of the upset price. A fresh decision in this regard shall be taken after affording opportunity of hearing to both side. The sale can be proceeded only on the basis of the fresh decision, which will be taken in accordance with the above direction.

5. The Registry will communicate this judgment to the Family Court, immediately.

6. The Family court will take a fresh decision as directed above, at the earliest possible, at any rate within a period of 2 weeks from the date of receipt of a copy of this judgment.

Sd/-

C.K. ABDUL REHIM, JUDGE.

Sd/-

MARY JOSEPH, JUDGE.

AMG

True copy

P.A. to Judge