

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MRS. JUSTICE MARY JOSEPH

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

OP (FC).No. 398 of 2015 ()

(AGAINST THE ORDER IN E.P.49/2012 IN O.S.239/2015 OF THE FAMILY COURT,
KOTTARAKKARA)

PETITIONER(S) :

RAJASEKHARAN PILLAI AGED 55 YEARS
S/O.KRISHNA PILLAI, NELLIPPARAMBIL KIZHAKKATHILVEEDU
PANTHAPLAVU MURI, PATTAZHY VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT.

BY ADV. SRI.K.V.ANIL KUMAR

RESPONDENT(S) :

1. GEETHA @ SHEEJAKUMARI, AGED 44 YEARS
D/O.PONNAMMA, SUNIL BHAVAN, VAZHAVILA
VENCHEMB MURI, KARAVALLOOR VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT.

2. KARTHIK R.PILLAI, AGED 18 YEARS
SUNIL BHAVAN, VAZHAVILA, VENCHEMB MURI
KARAVALLOOR VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT.

3. ROHITHA R.PILLAI @ AMRITHA, AGED 12 YEARS
SUNIL BHAVAN, VAZHAVILA, VENCHEMB MURI
KARAVALLOOR VILLAGE, PATHANAPURAM TALUK
KOLLAM DISTRICT. (RESPONDENT NO.3 REPRESENTED BY IST
RESPONDENT MOTHER) .

R1 to R3 BY ADVS.M/S.G.P.SHINOD, RAM MOHAN.G.,K.GOPALAKRISHNAN
NAIR, ANU V., GOVIND PADMANAABHAN, AJIT G.ANJARLEKAR.

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 09-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 398 of 2015 ()

APPENDIX

PETITIONER(S) ' EXHIBITS

EXT.P-1: TRUE COPY OF THE DECREE DATED 9.9.2005 IN OS NO.239/2005
BEFORE THE FAMILY COURT, KOTTARAKKARA

EXT.P-2: A TRUE COPY OF THE E.P NO.49/2012 IN OS NO.239/2005 BEFORE
THE FAMILY COURT, KOTTARAKKARA

EXT.P-3: A TRUE COPY OF THE PETITION DATED 21.10.2013 IN EP
NO.49/2012 IN OS.NO.239/2005

EXT.P-4: A TRUE COPY OF THE OBJECTION DATED 7.3.2015 IN EP
NO.49/2012 IN OS NO.239/2005

EXT.P-5: A TRUE COPY OF THE PHOTOGRAPHS OF THE PETITIONER'S FORMER
UNFINISHED RESIDENTIAL BUILDING AND PRESENT OLD RESIDENTIAL BUILDING.

/TRUE COPY/

P.S. TO JUDGE.

s1.

C.K.Abdul Rehim & Mary Joseph, JJ.

=====

O.P.(FC)No.398 of 2015

=====

Dated this the 9th day of October, 2015.

JUDGMENT

Abdul Rehim, J.

1. The petitioner herein is the judgment debtor in O.S.No.239 of 2005 on the files of the Family Court, Kottarakara which was decreed on 9.9.2005. The respondents herein are the decree holders. The respondents filed E.P.No.49 of 2012 seeking execution of the decree. The petitioner herein resisted the execution contending that he is unable to pay the amount of maintenance ordered as per the decree. The respondents sought realisation of the decree amount through sale of a portion of the immovable property attached, by filing Ext.P3 application. The petitioner filed objection to the said application as evidenced from Ext.P4. But the court below conducted the sale after fixing upset price of the property at ₹1,00,000/- (one lakh). The

respondents bid in auction the immovable property which was put to sale.

2. The petitioner in this original petition is seeking direction to stop the proceedings of execution against his residential property. *Inter alia* he seeks direction to consider Ext.P4 objection and to stop the execution proceedings against the immovable property.
3. This court is of the considered opinion that the reliefs sought for in the above original petition is totally misconceived, in view of the position that the court below had already conducted the sale. In all probability, the court might have proclaimed the sale only after considering Ext.P4 objections. Contention of the petitioner is that the auction was conducted without considering the objections raised to the effect that the mother of the petitioner has got a right over the property. It is also contended that, if the court below proceed further in the execution petition, then the petitioner will also lose his residential property. Therefore it was contended that, if the

proceedings in the execution petition is pursued the petitioner would be put to irreparable injury.

4. Learned counsel appearing for the respondents submitted that the sale was already conducted by the court below on 30.7.2015 and the immovable property sold is only a portion of the property under attachment, after excluding the residential building. It is pointed out that, despite the fact that sale was already conducted, the petitioner has not approached the court below in any appropriate application seeking to set aside the sale. It is submitted that the execution petition stands now posted for confirmation of the sale. In the above circumstances the reliefs sought for in this original petition will not come within the purview of the supervisory jurisdiction vested under Article 227, is the submission.
5. Having confronted with the contentions as above, learned counsel for the petitioner made an appeal to this court to permit him to make deposit of the entire sale amount before the court below and on that

basis to seek for setting aside the sale. An offer is made to the effect that the petitioner will deposit the entire amount for which sale is conducted before the court below, within a period of one week from today. We are of the considered opinion that, as an equitable relief the above prayer can be considered, since we notice that the claim in the execution petition is too low when compared with the extent of the property sold in auction and its value.

6. Under the above mentioned circumstances, the above original petition is hereby disposed of by permitting the petitioner to deposit the entire amount for which sale was conducted along with the amount specified under Rule 89 of Order 21 of the Code of Civil Procedure, before the court below, within a period of 10 days from the date of receipt of a copy of this judgment. If the petitioner makes such deposit and move the court below for setting aside the sale, the same shall be considered by the court and an appropriate order for setting aside the sale shall be issued, treating such petition as one

duly filed under Rule 89 of Order 21 CPC. It is made clear that it will be left open to the respondents to proceed further in the execution application, if the amount of sale deposited as above will not satisfy the decree.

Needless to observe that in case the sale is set aside as directed above, the amount under deposit shall be permitted to be withdrawn by the decree holders, who are the respondents herein.

C.K.Abdul Rehim, Judge.

Mary Joseph, Judge.

sl.