

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

OP (FC).No. 464 of 2015 (R)

EP.10/2005 IN OP.233/2004 OF THE FAMILY COURT, THIRUVALLA

PETITIONER(S):JUDGMENT DEBTOR

1. HARILAL, AGED 31 YEARS
AMBATT VEEDU (SREEKRISHNA VILASM), VALLICODE P.O.
VALLICODE VILLAGE, PATHANAMTHITTA DISTRICT, PIN-689648
2. SARDA SIVSANKARAN NAIR,
AMBATT VEEDU (SREEKRISHNA VILASM), VALLICODE P.O.
VALLICODE VILLAGE, PATHANAMTHITTA DISTRICT, PIN-689648
3. SIVASANKARAN NAIR,
AMBATT VEEDU (SREEKRISHNA VILASM), VALLICODE P.O.
VALLICODE VILLAGE, PATHANAMTHITTA DISTRICT, PIN-689648

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENT(S):DECREE HOLDER

T.D.PREETHA,
THADISSERIL VEEDU, VELLIYARA P.O., AYROOR VILLAGE
PATHANAMTHITTA DISTRICT PIN-689645.

R1 BY ADV. SRI.P.HARIDAS
R1 BY ADV. SRI.P.C.SHIJIN

THIS OP (FAMILY COURT) HAVING COME UP FOR ADMISSION ON 17-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (FC).No. 464 of 2015 (R)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT.P1-A TRUE COPY OF THE INTERIM ORDER DATED 27.7.2015 OP(FC)
NO.307/2015 HIGH COURT OF KERALA.

EXHIBIT.P2- A TRUE COPY OF THE ORDER DATED 23.7.2015 EP NO.10/2006 IN
OP.NO.233/2004 FAMILY COURT, THIRUVALLA.

EXHIBIT.P3- A TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER EP
NO.10/2006 IN OP.NO.233/2004 FAMILY COURT, THIRUVALLA.

RESPONDENT(S)' EXHIBITS

NIL

TRUE COPY

PS TO JUDGE

C.K.ABDUL REHIM & MARY JOSEPH, JJ.

OP(FC).No. 464 of 2015

Dated this the 17th day of December, 2015

JUDGMENT

Abdul Rehim,J.

In this original petition filed under Article 227 of the Constitution of India the petitioners are assailing Ext.P2 order passed by the Family Court, Thiruvalla in EP.No.10/2006 in OP.No.233/2004. The petitioners herein are the judgment debtors in EP.No.10/2005 and the respondent herein is the decree holder. The decree which is sought to be executed is one passed by the Family Court allowing realisation of money. According to the petitioners an appeal filed before this court against the judgment and decree stands dismissed for default, and an application filed seeking restoration of the appeal is pending consideration. Respondent/Decree Holder moved the court below for attachment and sale of the immovable properties scheduled in the execution application. Admittedly the petitioners have received notice under Rule 66 of Order XXI CPC.

2. Grievance of the petitioners is that, despite filing objections against the settlement of proclamation, the court below had passed the impugned order without considering such objections and fixed the upset price and proclaimed the property for sale. Hence this original petition is filed.

3. Heard; counsel appearing on both side. On a perusal of the order impugned it is evident that the court below had taken note of the objections filed by the judgment debtors. But in a cryptic manner it is observed that no sustainable objection to the settlement of proclamation is filed. Contention of the petitioners is that in the objections filed before the court below, various contentions are raised to the effect that the property in question is mortgaged to a co-operative bank. It is stated that a well, which is used for the purpose of drawing drinking water, is situated within the property. It was also contended that there is no necessity for selling the entire property for realisation of the decretal amount. Further contention was also raised to the effect that the value proposed by the decree holder is not realistic and the property is having a valuation of not less than 2.5.lakhs per cent.

4. As observed above, the impugned order does not reflect

consideration of any of the objections in its real perspective. Non application of mind and non advertence to the objections is manifest on the face of the order itself. Hence this court is of the opinion that the matter requires reconsideration at the hands of the court below.

5. Under the above mentioned circumstances, the original petition is allowed and Ext.P2 order passed by the Family Court in EP.No.10/2006 in OP.No.233/2004 on 23.7.2015, is hereby quashed. The Family Court is directed to reconsider the matter on the basis of the objections filed by the petitioners in response to Rule 66 notice, and to pass fresh orders after affording opportunity of hearing to both side. Considering the fact that execution application is of the year 2006, the matter shall be dealt with on a preferential basis and necessary steps shall be taken at the earliest possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment.

C.K.ABDUL REHIM, JUDGE

MARY JOSEPH, JUDGE

Pmn/

