

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.UBAID

TUESDAY, THE 28TH DAY OF JULY 2015/6TH SRAVANA, 1937

OP(Crl.).No. 227 of 2014 (Q)

AGAINST THE ORDER IN MC 146/2009 of J.M.F.C., KUNNAMANGALAM

PETITIONER:

AMEER K.V, AGED 32 YEARS,
S/O. K.P. MUHAMMED, "AYSHAS" EDAKATTUPARAMBU,
P.O. NORTH BEYPORE, NADUVATTOM AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.SUNNY MATHEW

RESPONDENTS:

1. OHISHA,
D/O. A.G. SUNILAN @ SIRAJUDHEEN, PALLATHIL HOUSE,
NADUVATTOM AMSOM AND DESOM, KOZHIKODE DISTRICT
NOW RESIDING AT ANWESHI SHORT STAY HOME, KOTOOLY.P.O,
KOZHIKODE - 673 001.
2. ALAYIL SUNILAN @ SIRAJUDHEEN, AGED 48 YEARS,
S/O. GOPALAN, BUSTHANABAD, PANNYAMKATTE,
VALIYAPARAMBA.P.O., THAMARASSERY, KOZHIKODE DISTRICT.
PIN - 673 001
3. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM - 682 031.

R-R2 BY ADV. SRI.C.N.SAMEER
R1 BY ADV. SRI.SRINATH GIRISH
R3 BY GOVERNMENT PLEADER SMT.HYMA

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON
28-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(Cr1.).No. 227 of 2014 (Q)

APPENDIX

PETITIONER'S EXHIBITS

P1. COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE 2ND RESPONDENT.

P2. COPY OF THE PLAINT IN O.S. 306/2010 SUB COURT, KOZHIKODE.

P3. COPY OF THE ORDER DATED 3-6-2013 IN LOK ADALAT CASE NO. 41/13 PASSED BY THE LOK ADALATH KOZHIKODE.

P4. COPY OF THE RECEIPT ISSUED BY THE 2ND RESPONDENT FOR HAVING RECEIVED A FURTHER SUM OF RS. 9 LAKHS.

P5. COPY OF THE ORDER DATED 7-5-2010 PASSED BY THE JUDICIAL MAGISTRATE OF FIRST CLASS KUNNAMANGALAM IN M.C. 146/2009.

RESPONDENTS' ANNEXURES:

NIL

//TRUE COPY//

P.A TO JUDGE

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P.UBAID, J.

O.P(CrI) No.227 of 2014

Dated this the 28th day of July, 2015

J U D G M E N T

The petitioner herein had agreed to purchase 10.90 cents of property from the 2nd respondent herein as per a contract for sale dated 20.7.2009. The 1st respondent is the daughter of the 2nd respondent. When the 2nd respondent failed to execute assignment deed as agreed, the petitioner approached the Sub Court, Kozhikode with O.S No.306/2010. Pending the proceedings before the Civil Court, the suit brought by the petitioner for specific performance of the contract was referred to the Lok Adalath. The petitioner and the 2nd respondent came to terms before the Lok Adalath, and accordingly the Lok Adalath passed an award in favour of the petitioner, directing the 2nd respondent to execute assignment deed as agreed by him. Ext.P3 is copy of the said award, having the force of executable decree. After this award, the petitioner came to know that the 1st respondent had already obtained Ext.P5 prohibitory order from the Judicial First Class Magistrate Court, Kunnamangalam

against alienation of the property, in a proceeding brought by her under Section 12 of the Protection of Women from Domestic Violence Act (for short 'DV Act'). The said order was passed as an interim measure under Section 23 of the DV Act. Suspecting collusion between the father and the daughter the petitioner approached this Court with this petition under Article 227 of the Constitution of India, for an order quashing Ext.P5 interim order passed by the learned Magistrate.

2. On hearing both sides, I find that Ext.P5 order cannot be set aside by this Court under Article 227 of the Constitution of India. The petitioner herein is not a party to the said proceeding. Being a stranger he cannot approach the learned Magistrate in the said proceeding brought under the DV Act, and he cannot obtain orders also. But he is not remedyless. He is well armed with a decree in his hands for specific performance of the contract. It is well settled that whatever orders passed by the Judicial First Class Magistrate, under the provisions of the DV Act will be subject to the orders and decrees of the competent civil court. It is submitted by the learned counsel for the 1st respondent that assignment of the property in execution of decree will amount to transfer “pendente lite”. This

is not acceptable at all. What is hit by Section 52 of the Transfer of Property Act is only voluntary transfer pending litigation. If property is assigned to the petitioner in execution of the decree obtained by him, it will be an involuntary transfer under court decree. It will not be hit by Section 52 of the Transfer of Property Act. Though the petitioner cannot obtain orders as regards Ext.P5 order, which is only interim in nature, he can very well execute the award in his favour, passed by the Lok Adalath, having the force of a decree. It will have to be executed through the Sub Court from where the suit was referred to the Lok Adalath.

3. Before this Court, in this proceeding, the 2nd respondent supports the 1st respondent-daughter. Having executed an agreement for sale, having received the amount of consideration, and having consented for an award before the Lok Adalath, he now turns against the purchaser. The petitioner cannot be blamed if he suspects collusion.

4. Though this Court cannot pass orders in this proceeding, quashing Ext.P5 order, it is made clear that the petitioner has remedies under the law. Ext.P5 order, or even any final order passed by the learned Magistrate, will be subject

to the decision of the competent civil court. Such orders will not stand in the way of execution of a decree passed by the competent civil court. In the main proceeding the learned Magistrate will have to consider whether such an order can be passed in the above situation.

In the result, this Original Petition is disposed of, with the observation that the petitioner can very well execute the decree in his favour, though the orders as sought by him quashing Ext.P5 order cannot be granted under Article 227 of the Constitution of India.

**P.UBAID
JUDGE**

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