

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

THURSDAY, THE 5TH DAY OF FEBRUARY 2015/16TH MAGHA, 1936

RP.No. 52 of 2015 () IN CRP.11/2014

(ORDER IN CRP 11/2014 DATED 11.12.2014)

PETITIONER/REVISION PETITIONER:

A.K.MOHANAN, AGED 61 YEARS
S/O.KUNJAN, MADATHILPARAMBIL HOUSE, PERUMPALLY P.O.
MULANTHURUTHY, ERNAKULAM DISTRICT

BY ADVS.SRI.T.KRISHNAN UNNI (SR.)
SRI.C.M.NAZAR
SRI.MANSOOR.B.H.

RESPONDENT/RESPONDENT:

B.D.BASHI
S/O.DIVAKARAN, PULLAMPATHIRIYIL HOUSE, ENADI KARA
CHEMPU VILLAGE, VAIKOM TALUK, KOTTAYAM DISTRICT

R BY SRI.K.S.HARIHARAPUTHRAN

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
05-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

SCL.

P.BHAVADASAN, J.

R.P.No. 52 of 2015
in
C.R.P.No. 11 of 2014

Dated this the 05th day of February, 2015

ORDER

This is a petition seeking review of the order dated 05.09.2012 in O.P.No. 550/2012 whereby this Court disposed of C.R.P.No. 11/2014.

2. The facts are set out in detail in the said order and it is unnecessary to reiterate in the present order. The main ground urged at the time of hearing the review petition is that it was not necessary to sell the extent of property that was sold to meet the decree debt and that constitute illegality and therefore the sale is bad in law. It was also contended that the mandatory provisions have been bypassed and also pointed out that Rule 330 of the Civil Rules of Practice has not been followed. For the above reasons it is contended that the sale is bad in law and it has to be set aside.

3. The learned counsel appearing for the respondent on the other hand contended that these contention comes at the very belated stage and there was no active involvement before the court below by the review petitioner and that would be evident from the various proceedings before the court during the proceedings in the E.P..

4. After having heard the learned counsel on both sides, there seems to be considerable force in the submissions made by the learned counsel for the respondent.

5. The review petitioner was given an opportunity by this Court by order in O.P.No.550/2012 which was disposed of by order dated 05.09.2012 to prefer an application under Section 47 of the C.P.C. assailing the same. Of course, the following observations are seen made in the said order:

“3. The following facts emerge from the discussion above.

i) Entire amount covered by the cheque has already been paid in the criminal

prosecution.

ii) Valuable extent of property has been sold for a ridiculously low price of Rs. 2,00,000/-(Rupees two lakhs only)

iii) The petitioner was seriously ill and under treatment during this period of time.”

6. However, before the court below even though an application under Section 47 of C.P.C. was filed by the judgment debtor, he did not feel it necessary to adduce any evidence in support of his claim resulting in the court below finding it difficult to accept any of the contentions put forward by the judgment debtor. He did raise all claims of the legality but they were not substantiate by any evidence. It was a case of total absence of evidence from the side of the judgment debtor with no materials to support the claim made that the sale is vitiated.

7. When this Court considered the challenge against the dismissal of the petition by the executing court, this Court had also occasion to observe that apart from the fact that no statement as such was filed by the judgment debtor

to show the actual amount due to the decree holder at the time of sale, there was no attempt also from the side of the judgment debtor to show that the property was sold at a ridiculously low price vitiating the sale. This Court has also occasion to notice that at the time of sale, the property was outstanding on mortgage and that too was discharged by the auction purchaser. Under these circumstances, when there was absolutely no evidence in support of the claim made by the petitioner, this Court had no option but to confirm the order of the court below.

8. There is nothing on record to indicate that there was any fraud or irregularity or illegality in the sale conducted by the court. It is not a matter for presumption or assumption that all sales are invalid unless shown otherwise. All sales are deemed to be valid in law unless shown otherwise. Merely by contending that 10 cents of property was sold only for two lakhs, that will lead to the irresistible conclusion that the property was sold at a low price. The

judgment debtor had a legal obligation at least prima facie shows that the value of the property was much more than what was shown in proclamation. In spite of being cautioned by this Court, the petitioner did not feel it necessary to adduce evidence in support of his claim. There is no error apparent on the face of the record warranting a review.

This petition is without any merits and is accordingly dismissed.

Sd/-
P.BHAVADASAN
JUDGE

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