

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

MONDAY, THE 9TH DAY OF FEBRUARY 2015/20TH MAGHA, 1936

RP.No. 115 of 2015

JUDGMENT DATED 18-11-2014 IN OP(C) 2550/2012
.....

REVIEW PETITIONER(S)/PETITIONERS:

- 1. N.N.SIVADASAN NAIR,
B-707, SAGAR RESIDENCY, SECTOR 27,
NERUL, NAVI MUMBAI - 400 706.**
- 2. PRASANNA S.NAIR,
W/O.N.N.SIVADASAN NAIR, B-707,
SAGAR RESIDENCY, SECTOR 27, NERUL,
NAVI MUMBAI - 400 706.**

**BY ADVS.SRI.K.RAMAKUMAR (SR.)
SRI.K.BALACHANDRAN (PN)
SRI.S.M.PRASANTH
SMT.AMMU CHARLES
SRI.G.RENJITH
SMT.JINNU SARA GEORGE**

RESPONDENT(S)/RESPONDENT:

**SAJU MATHEWS,
PROPRIETOR, G.P.RUBBER TRADERS, CHENNAKKUNNU,
PONKUNNAM, KOTTAYAM - 686 506.**

BY ADV. SRI.P.CHANDRASEKHAR

**THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
09-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

msv/

P. BHAVADASAN, J.

R.P. No. 115 of 2015 in
O.P.(C). No. 2550 of 2012

Dated this the 9th day of February, 2015.

ORDER

This Review Petition is directed against the judgment dated 18.11.2014 whereby this Court dismissed the Original Petition.

2. The facts are narrated in detail in the judgment mentioned above and therefore, it is unnecessary to reiterate it here.

3. Shri. K. Ramakumar, learned Senior Counsel for the petitioners raised only one point for consideration and that is, the decree holder had already taken possession of the property even before the execution proceedings were initiated and therefore, there was no question of obtaining delivery through court. He came into possession by illegal means and that cannot be permitted to continue. Learned counsel also pointed out that this Court had occasion to

observe that the entire property need not have been sold to meet the decree debt.

4. Shri. P. Chandrasekhar, learned counsel for the respondent on the other hand contended that he had taken possession of the property through court in execution of the decree and the allegation to the contrary is untrue.

5. First of all no such contention was raised before this Court to the effect that the decree holder had already taken possession of the property otherwise than through execution proceedings or by illegal means. In fact this Court was specifically given to understand that the property was delivered through court and there were no contra contentions by the petitioners before this Court.

6. There was no such contention on behalf of the petitioners before this Court that execution proceedings were invalid for the reason that there were no property to be delivered as the property had already been taken possession of by the decree holder.

7. This Court at various places in its judgment under review had observed that the judgment debtor had not participated in the proceedings and his presence could be procured only through paper publication. It was also found by this Court that notice of sale proclamation was also given but the judgment debtor did not respond. The sale was held on 9.2.2001 and it was confirmed on 19.5.2001 and delivery was ordered on 23.11.2001. At that time, the petitioners have no contention that there is no question of delivery of the property as the property is already in the possession of the decree holder. There is no error apparent on the face of the record warranting interference in review.

This Review Petition is without merits and it is dismissed.

sb.

P. BHAVADASAN,
JUDGE