

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYASHTA, 1937

WA.No. 1829 of 2010 () IN WP(C).25775/2010

JUDGMENT IN WP(C) 25775/2010 of HIGH COURT OF KERALA
DATED 13-09-2010

APPELLANTS/RESPONDENTS:

1. STATE BANK OF TRAVANCORE,
THIRUVANANTHAPURAM REP.BY ITS MANAGING DIRECTOR
PIN 695 001.
2. THE AUTHORIZED OFFICER AND CHIEF
MANAGER, STATE BANK OF TRAVANCORE, PERUMBAVOOR
BRANCH, PERUMBAVOOR, PIN 683 542.

BY ADVS.SRI.SANTHOSH MATHEW
SRI.SATHISH NINAN

RESPONDENT/PETITIONER:

K.O.THOMAS,AGED 62 YEARS,
S/O.OUSEPH, PROPRIETOR, KALLOOKADAN MODERN RICE
MILL, OKKAL PO, KALADY.

R1 BY ADV. SRI.M.A.ABDUL HAKHIM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 18-06-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

smv

**ANTONY DOMINIC
&
SHAJI P. CHALY, JJ.**

W.A. No.1829 of 2010

Dated this the 18th day of June, 2015

JUDGMENT

Antony Dominic,J.

The respondent filed the Writ Petition No.25775 of 2010 in which the first prayer made reads thus:

“Issue a writ of mandamus or such other writ, order or direction to the respondents to proceed against the rice mill of the petitioner including 66.5 cents of land in Sy.No.133/3-2, 134/1, 2 & 136/4 of Chelammattam village at the first instance and to proceed against the residential properties only if the liability of the petitioner to the respondents is not fully satisfied with its sale proceeds.”

2. After statement was filed by the appellants, the writ petition came up for consideration before the learned Single Judge on 13th September, 2010, when the learned Single Judge passed the impugned order directing the appellants to proceed against the properties covered under Item Nos.1, 2 and 5 in the statement filed by them and to proceed against item Nos.3 and 4 if the sale proceeds realised are found insufficient to satisfy the decretal amount. It was challenging this order the appellants

filed this appeal.

3. From the statement filed by the appellants, it would appear that item Nos. 3 and 4 which are excluded by the order of the learned Single Judge are residential properties which fact is also mentioned in the order of the learned Single Judge. Therefore, by excluding the residential properties initially from sale and by ordering to proceed against them only if the sale proceeds are insufficient to satisfy the decretal amount, the learned Single Judge was virtually allowing the main prayer in the writ petition itself. Such an order could not have been passed and for that reason, we find substance in the case of the appellant.

4. We also note that when this appeal was admitted on 22.10.2010, this Court passed an interim order suspending the order appealed against and this order is still in force.

In the aforesaid circumstances, the order of the learned Single Judge dated 13th September, 2010 impugned in this appeal is set aside and the appeal is allowed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.A. to Judge

smv