

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM
&
THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 1937

WP(C).No. 34916 of 2008 (S)

AGAINST THE ORDER IN OP 266/2000 of FAMILY COURT,TRIVANDRUM

PETITIONER:

GOPAKUMAR, S.B.SADANAM,
PRESS ROAD, VENGANOOR, THIRUVANANTHAPURAM.

BY ADVS.SRI.PIRAPPANCODE V.S.SUDHIR
SRI.SAJU JOHN

RESPONDENTS:

1. BINDU, DHARMASTHALA BHAVAN,
PIRAKODU, PHATHIMMA NAGAR, K.K.DISTRICT.

2. SATHEESHKUMAR, KUMARI SADANAM,
VENNIYOOR, VENGANOOR, THIRUVANANTHAPURAM.

R1 BY ADV. SRI.BASIL MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 COPY OF THE SALE PROCLAMATION.

EXT.P2 COPY OF THE EXTRACT OF THE LAND REGISTER SHOWING THAT THE PROPERTY IN SY.NO.468/2 IS IN THE NAME OF ONE SARAJINI.

EXT.P3 COPY OF THE RE-SURVEY PLAN OF THE PLOT COMPRISING IN BLOCK NO.30 OF VENGANOOR VILLAGE.

EXT.P4 COPY OF THE RE-SURVEY PLAN OF THE PLOT COMPRISING IN RESURVEYT NOS.460 AND 468 OF VENGANOOR VILLAGE.

EXT.P5 COPY OF THE AFFIDAVIT AND THE ACCOMPANYING APPLICATION SEEKING FOR SETTING ASIDE THE SAME AND RETURN OF THE AMOUNT.

EXT.P6 COPY OF THE COUNTER AFFIDAVIT FILED BY THE R2 TO EXT.P5 APPLICATION.

EXT.P7 COPY OF THE SALE DEED NO.1062/99.

EXT.P8 COPY OF THE CORRECTION DEED NO.1214/2005.

EXT.P9 COPY OF THE ORDER DATED 10.9.08 OF THE FAMILY COURT, THIRUVANANTHAPURAM IN EA.12/08 IN EP.54/02 IN OP.NO.266/00.

RESPONDENTS' EXHIBITS:NIL

/TRUE COPY/

P.S TO JUDGE

C.K.ABDUL REHIM & K. RAMAKRISHNAN, JJ.

.....
W.P.(C)No.34916 of 2008
.....

Dated this the 6th day of July, 2015.

JUDGMENT

Ramakrishnan, J:

The petitioner, who is the auction purchaser in the lower court has filed this petition challenging the order dismissing the application to set aside the sale under Article 227 of the Constitution of India.

2. It is alleged in the petition that the property scheduled as 'A' in the sale proclamation was sold in auction in E.P.No.54/2002 in O.P.No.266/2000 alleging that the property belongs to the Judgment debtor. The petitioner participated in the auction and purchased the same for ₹2,10,000/- and deposited 25% of the price as per rules. Later when he enquired about the same, it was revealed that as per the survey number shown in the sale proclamation, namely re-survey No.468/2, the property is not standing in the name of the second respondent and the property does not belong to him and so on that ground, he filed E.A.No.12/2008 to set aside the sale but the learned Family Court Judge, dismissed the application on

the ground that he has not paid the balance sale consideration as required and since he had defaulted in payment of the amount, the amount deposited is forfeited to the government and ultimately dismissed the application. Aggrieved by the same, the present writ petition has been filed by the petitioner.

3. When the application came up for hearing today, counsel for the respondents submitted that in the sale proclamation there was some mistake in the survey number and that was the reason why the petitioner happened to file an application stating that the property does not belong to the second respondent. But later the survey number was corrected and it was again auctioned and the decree holder herself has purchased the property. Since there is mistake in the survey number and as per the survey number shown in the sale proclamation, if it belongs to somebody else, then auction purchaser is entitled to file an application to set aside the same on the ground that judgment debtor has no marketable title over the property and such sale proclamation is not proper. This aspect was not properly considered by the court below. So the court below ought to have allowed the application and returned the amount deposited by the petitioner. So in view of

the discussions made above, the order passed by the court below dismissing the application is set aside and the application is allowed and that the sale in favour of the petitioner is set aside taking into consideration the fact that the property was re-auctioned after correcting the survey number and it was purchased by the decree holder herself. The lower court is directed to return the amount deposited by the petitioner to him on making necessary application for that purpose in accordance with law.

With the above directions and observations, this writ petition is disposed of.

Office is directed to communicate a copy of this judgment to the concerned court immediately.

Sd/-

C.K.ABDUL REHIM, JUDGE.

Sd/-

K. RAMAKRISHNAN, JUDGE.

/true copy/

P.S to Judge

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