

Muhammadali Vs. Alavi

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Court : Kerala

Decided On : Nov-08-2013

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : Muhammadali

Respondent : Alavi

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH FRIDAY, THE 8TH DAY OF NOVEMBER 2013 17TH KARTHIKA, 1935 FAO.No. 320 of 2013 ()
----- (AGAINST

ORDER

DATED 29.10.2013 IN I.A.NO.1728 OF 2013 IN O.S.NO.155 OF 2013 OF THE COURT OF SUBORDINATE JUDGE, MANJERI)
APPELLANT(S)/PETITIONER/PLAINTIFF:-: -----
MUHAMMADALI, S/O.ABOOBACKER, ATHIMANNIL HOUSE, MANJERI AMSOM ERNAD TALUK, VAKKETHODI DESOM, MALAPPURAM DISTRICT. BY ADV. SRI.P.VENUGOPAL
RESPONDENT(S)/RESPONDENT/DEFENDANT:-: -----
ALAVI, S/O.MUHAMMEDAJI, VATTAPARAMBIL HOUSE, IRUMBUZHI AMSOM PAPPINIPARA DESOM, ERNAD TALUK, MALAPPURAM DISTRICT PIN - 676 509. BY ADV.

SRI.N.M.MADHU THIS FIRST APPEAL FROM

ORDER

S HAVING COME UP FOR ADMISSION ON 08/11/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: THOTTATHIL B.RADHAKRISHNAN & BABU MATHEW P.JOSEPH, JJ.

..... FAO No.320 of 2013
..... Dated this the 8th day of November, 2013.

JUDGMENT

Thottathil B.Radhakrishnan, J.

1.We have heard the learned counsel for the appellant and the learned counsel for the respondent. 2.Appellant is the plaintiff in a suit for return of money allegedly paid towards part of consideration for a contract for sale of immovable property. He obtained an ad interim order of conditional attachment before judgment as regards the property, which is subject matter of the contract for sale, also calling upon the respondent/defendant to furnish security. The respondent entered appearance and offered Ext.B1 property as security. He also provided Ext.B2, which is the gazette notification, which reflected the fair value fixed by the Government for land in that area. Ext.B3 is the notarized copy of sale agreement, which the defendant showed to point out that he needs to sell the property, which was covered by the order of attachment. With the FAO 32013 -2- aforesaid, the court below considered the matter with reference to records and held that the property offered is sufficient security. There appears to be an error in the judgment, to the effect that the property covered by Ext.B1 is one acre and 96 cents, though the actual extent is only 48 cents. Even if the actual extent is only 48 cents, going by Ext.B2 notified rate as fair value, the plaint amount would be appropriately covered. With this, we do not find any ground to interfere with the order impugned. This appeal, therefore, is only to be dismissed. 3.The learned counsel for the appellant further argued that the impugned order is one which facilitates transfer of the property covered by the agreement. For one thing, we are

not on a suit for specific performance of a contract for sale. Not only that, even in a suit for specific performance, transfer of property covered by that agreement to any other person is not an anathema but would be regulated only by the doctrine of lis pendens. We, therefore, do not find any ground to interfere with the interim order on this count either. FAO32013 -3- 4. We record the submission on behalf of the appellant that Ext.B2 rates has further been scaled down by the authorities in relation to neighbouring properties. That is a matter that the plaintiff can bring to the notice of the court below and seek appropriate orders, if any further security is required. That cannot stand in the way of effectuating the impugned order. With the aforesaid, this appeal fails and it is, accordingly, dismissed. No costs. (THOTTATHIL B.RADHAKRISHNAN, JUDGE) (BABU MATHEW P. JOSEPH, JUDGE) jg/

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