

Sathi Kumari Vs. Padmakumar

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Court : Kerala

Decided On : Sep-26-2014

Judge : Honourable Mr. Justice B.Kemal Pasha

Appellant : Sathi Kumari

Respondent : Padmakumar

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE B.KEMAL PASHA FRIDAY, THE 26TH DAY OF SEPTEMBER 2014 4TH ASWINA, 1936 OP(C).No. 697 of 2011 (O) ----- AGAINST THE

ORDER

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JUDGMENT

IN OS2462008 of II ADDL.M.C., NEYYATTINKARA PETITIONER(S)/PETITIONER: ----- SATHI KUMARI, D/O. THANKAMMA PILLAI, AGED 40 YEARS, DIVYA PRIYA HOUSE, KANNUMANOODU P.O. VILAVANCODE TALUK, KANYAKUMARI DISTRICT. BY ADV. SRI.R.GOPAN RESPONDENT(S): ----- PADMAKUMAR, KIDANGARA VEEDU, CHENKAL VILLAGE, PLAMOOTUKADA P.O. NEYYATTINKARA. THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 26/09-

2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP.(C) 697/2011 APPENDIX PETITIONERS' EXTS. EXT.P1 - PHOTOCOPY OF THE

JUDGMENT

IN O.S.246/2008 PASSED BY THE COURT OF THE ADDITIONAL MUNSIF-II, NEYYATTINKARA DTD. 28.7.08. EXT.P2 - PHOTOCOPY OF E.P.NO.44/2009 O.S.246/2008 ON THE FILE OF THE COURT OF THE ADDITIONAL MUNSIF-II, NEYYATTINKARA DTD. 27.1.09. EXT.P3 - PHOTOCOPY OF THE AFFIDAVIT IN O.S.246/2008 FILED BY THE PETITIONER DTD.27.1.2009. EXT.P4 - PHOTOCOPY OF OBJECTION FILED BY THE RESPONDENT IN EP4409 IN O.S.246/08 BEFORE THE COURT OF THE ADDITIONAL MUNSIF-II, NEYYATTINKARA DTD.13.10. EXT.P5 - PHOTOCOPY OF THE REVIEW PETITION FILED BY THE RESPONDENT IN EP4409 IN O.S.246/08 BEFORE THE COURT OF THE ADDITIONAL MUNSIF-II, NEYYATTINKARA DTD.14.10. EXT.P6 - PHOTOCOPY OF THE OBJECTION FILED BY THE PETITIONER IN EP4409 IN O.S.246/08 PASSED BY THE 2ND ADDITIONAL MUNSIF, NEYYATTINKARA DTD.7.10. EXT.P7 - PHOTOCOPY OF

ORDER

DTD.8.7.10 IN EP4410 IN O.S.246/08 PASSED BY THE COURT OF THE ADDITIONAL MUNSIF-II, NEYYATTINKARA . RESPONDENTS' EXTS. NIL // TRUE COPY // B.KEMAL PASHA, J.

..... O.P.(Civil) No.697 of 2011
..... Dated this the 26th day of September,
2014

JUDGMENT

Through Ext.P1 judgment, O.S.No.246/2008 of the 2nd Additional Munsiff Court, Neyyattinkara was decreed in favour of the petitioner, who is the plaintiff, whereby the petitioner was allowed to realise an amount of 54,500/- with interest at the rate of 12% per annum on an amount of 50,000/- from the date of suit till the date of realisation from the respondent/defendant and his assets. The decree was put in execution, and the procedure contemplated under Order XXI Rule 37 of the CPC

was initiated and completed. On proving the means of the Judgment Debtor to pay the decree amount in whole, a warrant was ordered and issued.

2. The respondent filed Ext.P5 application for review of the order by which warrant was ordered and issued. O.P.(C) 697 of 2011 -:

2. :- Without fail the petitioner/Decree Holder filed Ext.P6 objection as against P5. When the Judgment Debtor appeared before the court below, the petitioner accepted an amount of 1,000/- paid by the Judgment Debtor. On acceptance of the said amount, it seems that the court below has closed the Execution Petition through Ext.P7 order by stating that "If the Judgment Debtor defaulted any instalment payment, the Decree Holder has liberty to revive the EP and issue warrant to the Judgment Debtor without any prior notice to the Judgment Debtor." Ext.P7 order is being challenged by the petitioner.

3. Heard the learned counsel for the petitioner Sri.R. Gopan. There is no representation for the respondent. The learned counsel for the petitioner has pointed out that the court below ought not to have closed the EP and ought not to have allowed any instalments without the consent of the decree-holder, as the decree in O.P.(C) 697 of 2011 -:

3. :- question was not one passed under Order XX Rule 11 of the Code of Civil Procedure, 1908.

4. It seems that the impugned order is per se illegal and irregular. The learned counsel for the petitioner has pointed out that the Judgment Debtor had paid 2,000/- more and has not made any further payment. Still, the petitioner is clothed with a decree. But he could not recover the amount so far. Hence, the impugned order is liable to be set aside. In the result, this original petition is allowed and Ext.P7 order is set aside. The EP is revived and restored. The court below is directed to issue warrant to the respondent forthwith, and to proceed in accordance with law. Sd/- B.KEMAL PASHA, JUDGE ul/- [True copy] P.S. to Judge