

Moideen vs Omanadas

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Court : Kerala

Decided On : Apr-23-2024

Judge : Honourable Mr.Justice V.G.Arun

Appeal No. : CRP/492/2017

Appellant : Moideen

Respondent : Omanadas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY,
THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 CRP NO. 492
OF 2017 AGAINST THE ORDER/JUDGMENT DATED 30.06.2017 IN
OS NO.179 OF 2005 OF MUNSIF COURT, OTTAPPALAM REVISION
PETITIONER/S: MOIDEEN AGED 67 YEARS AGED 67 YEARS, SON
OF KORAKULAM VEETIL MOIDU, KORAMKULAM HOUSE, ARIYUR
THEKKUMMURI DESOM, OTTAPALAM AMSOM OTTAPALAM
TALUK, PALAKKAD DISTRICT. BY ADVS. SRI.K.RAMAKUMAR (SR.)
SMT.ASHA BABU SMT.R.S.ASWINI SANKAR SRI.S.M.PRASANTH
SRI.T.RAMPRASAD UNNI RESPONDENT/S: 1 OMANADAS AGED 55
YEARS, D/O.LATE MENAKATH VEETIL RUGMINI

AMMA,ARIYURTHEKKUMURI DESOM,OTTAPALAM
TALUK,PALAKKAD DISTRICT. 2 SMT.REMADEVI AGED 51
YEARS,D/O.MENAKATH VEETIL JANAKI
AMMA,ARIYURTHEKKUMURI DESOM,OTTAPALAM
TALUK,PALAKKAD DISTRICT. BY ADVS. SRI.SANTHEEP ANKARATH
SRI.M.MANOJKUMAR CHELAKKADAN THIS CIVIL REVISION
PETITION HAVING BEEN FINALLY HEARD ON 16.02.2024, ALONG
WITH CRP.627/2017, THE COURT ON 23.04.2024 DELIVERED THE
FOLLOWING: -2-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE V.G.ARUN TUESDAY,
THE 23RD DAY OF APRIL 2024 / 3RD VAISAKHA, 1946 CRP NO. 627
OF 2017 AGAINST THE ORDER/JUDGMENT DATED 30.06.2017 IN
OS NO.179 OF 2005 OF MUNSIF COURT, OTTAPPALAM REVISION
PETITIONER/S: MOIDEEN AGED 67 YEARS AGED 67 YEARS, SON
OF KORAKULAM VEETIL MOIDU, KORAMKULAM HOUSE, ARIYUR
THEKKUMMURI DESOM, OTTAPALAM AMSOM, OTTAPALAM
TALUK, PALAKKAD DISTRICT. BY ADVS. SRI.T.RAMPRASAD UNNI
SMT.ASHA BABU SMT.R.S.ASWINI SANKAR SRI.S.M.PRASANTH
RESPONDENT/S:

1 SRI.RAJAN MUTHAN SON OF MADHAVA MUTHAN, KANJANA
NIVAS, ARIYUR THEKKUMMURI AMSOM DESOM, OTTAPALAM
TALUK, PALAKKAD DISTRICT, PIN-678583. 2 MR.ANAND SON OF
RAMADEVI, SOWHRIDA HOUSE, HOUSE NO.103E, SEENATH
JUNCTION, OONAMAVU, KUZHITHADA, ALUVA- 683101. 3
SMT.OMANADAS AGED 56 YEARS, W/O.KRISHNADAS,
KRISHNAPRABHA HOUSE, THOTTAKKARA, OTTAPALAM DESOM,
OTTAPALAM TALUK, PALAKKAD DISTRICT, PIN-679102. BY ADVS.
SRI.ARUN MATHEW VADAKKAN SRI.SANTHEEP ANKARATH THIS
CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON

16.02.2024, ALONG WITH CRP.492/2017, THE COURT ON 23.04.2024
DELIVERED THE FOLLOWING: -3-

ORDER

Dated this the 23rd day of April, 2024 The challenge in these revision petitions is against the common order dismissing E.A.No.390 of 2008 in E.P.No.123 of 2005 in O.S.No.212 of 2004 and E.A.No.425 of 2011 in E.P.No.64 of 2009 in O.S.No.179 of 2005, filed by the revision petitioner under Order XXI Rules 97 & 99 and

Order XXI Rule 58 of the Code of Civil Procedure.

The essential facts, with the parties referred to as described in CRP No.492 of 2017, are as under; The petition schedule property belonged to one Ramadevi/second respondent and her two sons. The petitioner entered into an agreement for sale with the owners of the property on 02.01.2006. Out of the total sale consideration of Rs.4,00,000/-, the petitioner paid Rs.2,00,000/- on the date of agreement and got possession of -4- the petition schedule property. As the owners did not execute the sale deed in terms of the agreement, the petitioner filed O.S.No.30 of 2004 before the Sub Court, Ottapalam seeking specific performance of the agreement. Pending the suit, the parties settled their dispute and the suit was decreed on 21.05.2005 in terms of the compromise. Thereafter the petitioner filed E.P.No.8 of 2006 for getting the decree enforced and got the sale deed (document No.1372 of 2007 of Ottapalam SRO) registered in his name. The petitioner thereafter got the property mutated to his name and was paying land tax. But, when the

petitioner approached the Municipality

informed that the building stands mutated in the name of the first respondent. Thereupon, the petitioner made enquiries and came to understand a collusive suit (O.S.No.212 of 2004) had been -5- filed by the first respondent against the second respondent and the Munsiff Court, Ottapalam had decreed that suit on 11.10.2004. Based on that decree, the first respondent filed E.P.No.123 of 2005, purchased

the petition schedule property in auction and got delivery of the property on 05.08.2006. Faced with such a situation and left with no other alternative, the petitioner filed the execution applications for getting the sale in favour of the first respondent set aside and for removing the obstruction to his enjoyment of the petition schedule property. The learned Munsiff dismissed the applications finding them to be not maintainable.

2. Heard Senior Advocate K.Ramakumar for the revision petitioner and Advocate Santheep Ankarath for the first respondent.

3. Learned Senior Counsel contended that

the court below had grossly erred in holding the execution applications to be not maintainable. -6- The court below proceeded on the mistaken impression that actual physical possession is

necessary for making an application under Order

XXI Rule 99. Relying on the Division Bench decision of this Court in Saviour v. E.V.Mathai and Others [2008 (1) KHC 849], it is contended that an aggrieved third person need not wait till his actual physical dispossession, for submitting an application under Order XXI Rule 99. The further contention is that the only remedy available to the petitioner is to file execution applications since no separate suit is maintainable, as held by the Full Bench of this Court in Danish Varghese v. Jancy Danish [2021

(1) KLT 631]. According to the Senior Counsel,

the question of limitation does not arise since execution applications were filed immediately after the petitioner came to know about the decree passed in O.S.No.212 of 2004 and the so- -7- called delivery of the property to the first respondent.

4. Learned Counsel for the first respondent

contended that the civil revision petitions are not maintainable in view of Order XXI Rule 103, as per which the order made on any application adjudicated upon under Rule 98 or Rule 100 shall have the same force and be subject to the same conditions as to an appeal or otherwise, as if it

were a decree. As such, only an appeal

Moreover, the petitioner was well aware of the suit (O.S.No.212 of 2004) filed by the first respondent and had even filed an application for getting himself impleaded in that suit. In such circumstances, the order of the execution court, finding the applications to be barred by limitation warrants no interference.

5. In response to the contention regarding -8- maintainability, learned Senior Counsel submitted that Order XXI Rule 103 would apply only if the impugned order is passed after

adjudication of the issues involved. The execution applications in the case at hand were dismissed without adjudication, but on the ground of limitation. Hence, the order can be challenged in revision.

6. One of the applications, E.A.No.425 of 2011 in E.P.No.64 of 2009 in O.S.No.179 of 2005, was filed by the petitioner under Order XXI Rule 58 of CPC. In this context, it is pertinent to note that Rule 58 of Order XXI deals with

adjudication of claims and objections to attachment of property. The Proviso to Rule 58(1) makes it clear that a claim or objection under that provision shall not be entertained if it is made after sale of the attached property. In the case at hand, the property, with respect to which the claim is raised, was sold in auction to the

-9- first respondent on 24.10.2005, the sale confirmed on 09.01.2006 and the property delivered through Amin on 05.08.2006. The claim petition under Order XXI Rule 58 was filed only in the year 2011 and was hence not maintainable. Hence, the order passed in that execution application warrants no interference.

7. The other execution application

E.A.No.390 of 2008 in E.P.No.123 of 2005 in O.S.No.212 of 2024 is filed under Order XXI Rules 97 and 99. Here, it is to be noted that Order XXI Rule 97 empowers the decree holder to make an application against the resistance or obstruction in obtaining possession of immovable property by

any person.

On the other hand, an application under Order

dispossessed of immovable property by the holder of a decree. It is therefore clear that a person cannot simultaneously seek removal of obstruction -10- or resistance to the enjoyment of his property and reinstatement to the very same property on the premise that he was illegally dispossessed.

8. The petitioner's contention that he was

not aware of the decree passed in O.S.No.212 of 2004 and delivery of the property in execution of that decree, was rightly rejected by the court below, finding that the petitioner had filed an application for impleadment in O.S.No.212 of

2004. Therefore, the finding that the applications are barred by limitation is liable to be affirmed. It is also an undisputed fact that the petition schedule property is lying

adjacent to the petitioner's residence. Hence, the petitioner cannot feign ignorance about the delivery of the property and the changes made to the property by the first respondent.

9. As regards the contention raised in reply to the objection as to maintainability of the revision petition, no doubt Order XXI Rule -11- 103 would come into play only if the impugned

order was passed after adjudication of the

application under Rule 98 or Rule 100. In legal parlance, the term 'adjudication' implies the

hearing by a court, after notice, of the issues

involved. It contemplates consideration

'adjudication' in the context of Order XXI Rule 103, was considered by this Court in *Arjunan Achary v. Thankamma* [1988 KHC 585]. Paragraphs 3 and 4 of the judgment being contextually relevant are extracted hereunder;

3. The scheme of O.21 R.97, 98 and 101 would show that a holder of a decree for possession of immovable property may make an application to the Court executing the decree if he has any complaint of any resistance offered by any stranger to the execution of the decree or when there is any obstruction from any other quarter. In that application the -12-

court has got jurisdiction to decide all questions including the question relating to right, title or interest in the property arising between the parties to the proceeding, or their representatives and which are relevant for adjudication of the application. After the adjudication under O.21 R.101, the court has to pass under O.21 R.98 either (a) making an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the

application or (b) pass such order

as, in the circumstances of the case,

it may deem fit. Thus the final order

in a petition for removal of obstruction is what is contemplated under O.21 R.98. The proceedings initiated under O.21 R.97 are required to be enquired into under O.21 R.101 and disposed of under O.21 R.98. The adjudicatory process under O.21 R.101 contemplates an application of the mind, a consideration of the claim on the merits and a conclusion based on reasons. Even then, there may be cases where the court is constrained -13-

to reject the application without any adjudication at all. Where no adjudication is required in any case, and the application has to be dismissed without any investigation, still the court has the duty to pass final orders under O.21 R.98. It is the order under O.21 R.98 that disposes of the application under O.21 R.97. R.103 provides an appeal against that order. If this is the policy and purpose of the provisions, as I understand it, it follows that the order passed by the court in this case, dismissing the application for removing obstruction under O.21 R.97 was an order under O.21 R.98, appealable under O.21 R.103.

4. The word 'adjudication'

mentioned in O.21 R.103 has to be understood in the context, in which it is made for, the word 'adjudication' occurs in O.21 R.101 which does not provide for appeal and the word 'adjudication' does not occur in O.21 R.98 which provides for an appeal. The expression 'adjudication' and 'determination' thus have to be understood in their context, namely, that it is the determination -14-

contemplated under O.21 R.98, which is referred to in O.21 R.103 as the "adjudication" for the purposes of the appeal. The dismissal of an application under O.21 R.97 in so far as the decree holder is concerned, is an "adjudication" so far as his right to continue the execution petition. It is an "adjudication" so far as the obstructor is concerned for, his obstruction can no longer be removed by the decree holder. In this sense also, the order dismissing the application for removing resistance of obstruction is well within the ambit of O.21 R.103. The court below was, therefore, right in holding that the appeal was maintainable and in exercising its appellate power.

Later, in *M/s.Kottachery Sarvothama Srinivasa Shenoy and Bros. v. Kodoth Krishnan Nair* [2009(2) KHC 323], it was clarified that, adjudication of rights does not require the court to go into the merits of all the contentions raised and even an

adjudication of limitation will amount to an

adjudication of the application filed under Order

-15- XXI Rule 97 and such an order will have the force of a decree, as provided under Order XXI Rule

103. On perusal of the impugned order, it is seen that the decision was rendered after necessary adjudication regarding the petitioner's entitlement for the reliefs sought in the execution applications. Therefore, the fact that the court found the applications to be barred by

limitation also does not render it an order

passed without adjudication. For the aforementioned reasons, the civil revision petitions are dismissed. sd/- V.G.ARUN JUDGE Scl/

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