

Ajaykumar vs Ramdas

Ajaykumar vs Ramdas

SooperKanoon Citation : sooperkanoon.com/1363724

Court : Kerala

Decided On : Sep-30-2023

Judge : Honourable Mr. Justice Devan Ramachandran

Appeal No. : OP(C)/1110/2023

Appellant : Ajaykumar

Respondent : Ramdas

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN SATURDAY, THE 30TH DAY OF SEPTEMBER 2023 / 8TH ASWINA, OP(C) NO. 1110 OF 2023 AGAINST THE ORDER/JUDGMENT EP 34/2016 OF SUB COURT, PETITIONER/DECREE HOLDER: AJAYKUMAR AGED 53 YEARS S/O MULLASSERY VILASINI AMMA, LOKAMALESWARAM VILLAGE/DESOM/POST, THRISSUR DISTRICT, PIN - 680664 BY ADV P.K.RAVISANKAR RESPONDENTS/JUDGMENT DEBTOR: RAMDAS AGED 76 YEARS S/O KARUKAPARAMBIL KRISHNAN, THALIKULAM VILLAGE/POST, TAHMBINKADAVU DESOM, THRISSUR DISTRICT, PIN - 680569 BY ADVS. K.S.BABU N.SUDHA(S-652) BABU

SHANKAR(K/821/2010) ALVIN JEWEL S.S.(K/000876/2019) THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 30.09.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ..2..

JUDGMENT

The controversy projected in this case is essentially with respect to the value to be fixed for the decree schedule property, so as to bring it to sale under execution proceedings relating to the judgment and decree in O.S.No.444/13 on the files of the Sub Court, Chavakkad.

2. Sri.Ravi Sankar P.K. - learned counsel for the

petitioner, explained that, even though the property was brought to sale at least twice, with an upset price fixed at Rs.50 Lakhs/- and Rs.43 Lakhs/- respectively, there were no bidders; and therefore, that his client moved E.A.No.81/2019, to reduce it to Rs.23 Lakhs/-, which has now been dismissed by the Trial Court, through a single line order, saying that it is exiguous. He asserted that it is not so; and that, going by the market price available to the properties in the area in question, even this figure may not be fetched in a court auction. He thus prayed that the impugned order be set aside and the Execution Court be directed to revise the upset price of the property, to the figure suggested by his client.

3. Smt.N.Sudha - learned counsel for the respondent,

..3.. on the other hand, submitted that Trial Court has fixed the upset price advertng to the notified fair price in the locality; and therefore, that the impugned order is without error.

4. As I have already said above, the real disputation in

this case, is as to the value that the property may fetch in an execution proceedings. This is a pure question of fact, which cannot be decided by this Court, while acting under Article 227 of the Constitution of India.

5. I notice from the impugned order that Execution

Court has found that the upset price fixed for the property is adequate. However, there is nothing in the said order to establish this in any manner; and therefore, this Court is unable to assess it judicially. In the afore circumstances, I allow this writ petition and set aside the order impugned; thus directing the learned Sub Judge, Chavakad, to reconsider E.A.No.103/23, after hearing both sides, thus resulting in an appropriate order, as expeditiously as is possible, but not later than two months from the date of receipt of a copy of this judgment. I, however, make it clear that I have not entered into the merits of the rival contentions and that they are left open to be ..4..

decided appropriately by the learned Sub Judge; and the order

to be issued by it shall reflect relevant consideration, as also the reasons for it.
Sd/- DEVAN RAMACHANDRAN, JUDGE ACR ..5..
APPENDIX OF OP(C)
1110/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE AFFIDAVIT
AND

PETITION IN E.A. NO. 347 OF 2018 IN E.P. NO. 34 OF 2016 IN O.S. NO. 444 OF 2013 ON THE FILE OF SUB COURT, Exhibit P2 TRUE COPY OF THE ORDER DATED 8-1-2019 IN E.A. NO. 347 OF 2018 IN E.P. NO. 34 OF 2016 IN O.S. NO. 444 OF 2013 ON THE FILE OF SUB COURT, CHAVAKKAD Exhibit P3 TRUE COPY OF THE ORDER DATED 4-11-2019 E.A. NO. 81 OF 2019 IN E.P. NO. 34 OF 2016 IN O.S. NO. 444 OF 2013 ON THE FILE OF SUB COURT, CHAVAKKAD Exhibit P4 TRUE COPY OF THE AFFIDAVIT AND PETITION IN E.A. NO. 103 OF 2023 IN E.P. NO. 34 OF 2016 IN O.S. NO. 444 OF 2013 ON THE FILE OF SUB COURT, Exhibit P5 CERTIFIED COPY OF THE ORDER DATED 16- 2-2023 IN E.A. NO. 103 OF 2023 IN E.P. NO. 34 OF 2016 IN O.S. NO. 444 OF 2013 ON THE FILE OF SUB COURT, CHAVAKKAD

RESPONDENT EXHIBITS Exhibit R1 (b) The true copy of the objection filed by the respondent to E.A 102/2021 Exhibit R1 (a) E.A. The true copy of the objection filed by the judgment debtor Exhibit R1 (c) The true copy of the Order dated 20.09.2022 in E.P No. 34/2016 in O.S No. 444/2013 Exhibit R1 (d) The true copy of the fair value published by the Government of Kerala in the extraordinary gazette dated 25.03.2023 Exhibit R1 (e) The true copy of the certificate dated

09 th September, 2014 issued by Dr. Ajit Kumar Varma MS, Podiatric Surgeon,
Endocrinology and Podiatry AIMS, Kochi 41

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com