

Poly vs Sidharthan

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Court : Kerala

Decided On : Jul-24-2023

Judge : Honourable Mr.Justice C.S.Dias

Appeal No. : OP(C)/1483/2023

Appellant : POLY

Respondent : Sidharthan

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE C.S.DIAS MONDAY, THE 24TH DAY OF JULY 2023 / 2ND SRAVANA, 1945 OP(C) NO. 1483 OF 2023 AGAINST THE ORDER/JUDGMENT IN OS 4011/2017 OF PRINCIPAL MUNSIFF COURT, THRISSUR CMA 116/2022 OF ADDITIONAL DISTRICT COURT & SESSIONS COURT -IV, THRISSUR / III ADDITIONAL MACT, THRISSUR PETITIONER: POLY, AGED 58 YEARS, WESTERN BAZAR ARANATTUKARA VILLAGE AND DESOM, ARANATTUKARA PO, ARANATTUKARA SO THRISSUR, PIN - 680618 BY ADVS.DEEPU LAL MOHAN ATHUL LAL RESPONDENTS: 1 SIDHARTHAN, AGED 69 YEARS C/O KOPPARA VEETIL UNNIKRISHNAN VENKIDANGU VILLAGE CHAVAKKAD TALUK,

THRISSUR, PIN - 680669 2 BOBAN, AGED 62 YEARS SON OF CHAKKALAKAL JOSE, PALAKKAL DESOM, PALISSERY VILLAGE THRISSUR TALUK, PIN - 680027 3 SINDHU, AGED 52 YEARS FLAT NO. 4H CHELOOR TOWERS POOTHOLE VILLAGE AND DESOM THRISSUR TALUK, PIN - 680618 THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 24.07.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :: 2 ::

JUDGMENT

Dated this the 24th day of July 2023

The original petition is filed assailing Ext.P27 order

passed by the Court of the Additional District Judge-IV, Thrissur (lower Appellate Court) in I.A.5/2023 in CMA

2. The relevant factual matrix for the determination of the original petition are:

(i) The petitioner is the third respondent and respondents in the original petition are the appellant and respondents 1 and 2 in the above appeal.

(ii) The second respondent had filed O.S.4011/17 before the Court of the Principal Munsiff, Thrissur (Trial Court) against the respondents 1 and 3 for a decree of specific performance.

(iii) The suit was decreed by Ext.P1 judgment and Ext.P2 decree on 29.11.2018. :: 3 ::

(iv) As the respondents 1 and 3 did not execute the

sale deed, the second respondent deposited the balance sale consideration and filed Ext.P3 application, under Section 28(3) of the Specific Relief Act, 1963 (in short Act), to get the sale deed executed through the process of law. The second respondent also filed Ext.P4 execution petition, to realize the cost of the decree.

(v) Later, the petitioner bonafidely purchased

Ext.P2 decree by Ext.P5 assignment deed. Then, the petitioner filed Ext.P6 application seeking leave to prosecute Ext.P3 application, which was allowed by Ext.P7 order, by the Trial Court.

(vi) While so, the first respondent filed Exts.P12

and P13 applications before the Trial Court, to set aside the ex-parte decree and also to condone the delay in filing the said application. The petitioner was not made a party to the above applications. But, the petitioner got himself impleaded in Exts.P12 and P13 applications.

(vii) The Trial Court, by Ext.P21 common order, dismissed Exts.P12 and P13 applications. :: 4 ::

(viii) Challenging Exts.P21 order, the first respondent has filed C.M.A.116/22 before the lower Appellate Court. Subsequently, the first respondent also filed Ext.P25 application to stay further proceedings in the suit.

(ix) The lower Appellate Court, by the impugned Ext.P27 order, allowed Ext.P25 application and has stayed further proceedings in O.S.4011/2017.

(x) Ext.P27 is palpably wrong and erroneous. Hence, the original petition.

3. Heard Sri.Deepu Lal Mohan, the learned counsel for the petitioner on admission.

4. Sri.Deepu Lal Mohan vehemently argued that

the powers of the appellate court under Order XLI Rule 5 of the Code of Civil Procedure is confined to only stay the execution proceedings. Ext.P3 application filed by the second respondent and now being prosecuted by the petitioner is an application filed under Section 28(3) of the Act, which is not an execution proceedings under

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Order XXI of the Code of Civil Procedure, but only a

continuation of the original proceedings. Therefore, placing reliance on the decision of this Court in *Leela.C.J. v. Life Insurance Corporation of India* [2023

(1) KHC 672], he contended that Ext.P27 order passed by the lower Appellate Court, staying further proceedings in O.S.4011/17 is untenable and is liable to be set aside.

5. The point is whether there is any illegality in Ext.P27.

6. It is not in dispute that the Ext.P2 decree is an

ex-parte decree. Although the first respondent had filed an application to set aside Ext.P2 decree, the same was dismissed by the trial court by Ext.P21 common

order.

7. Assailing Ext.P21 common order, the first respondent has filed CMA 116/22 before the lower appellate court. :: 6 ::

8. The lower appellate court, after appreciating

the rival contentions in Ext.P25 application and Ext.P26 counter affidavit, has deemed it necessary and proper to stay further proceedings pursuant to Ext.P2 decree, to preserve the subject matter in the suit. It is by

exercising its discretionary powers that Ext.P27 order

has been passed staying further proceedings, pursuant to Ext.P2 decree, till a final decision is taken in CMA

9. The contention of the learned counsel for the

petitioner that this Court in *Leela.C.J. (supra)* has held

that only the execution of decree can be stayed, invoking the powers under Rule 5 of Order 41 of Code of Civil Procedure, is untenable. This Court has in unequivocal terms held that the powers under the said provision will operate only against execution proceedings or steps, if any, taken to get the decree/order executed. :: 7 ::

10. A reading of the affidavit filed in support of Ext.P25 application will substantiate that the first respondent has sought to stay further proceedings pursuant to Ext.P2 decree passed in O.S.4011/2017.

11. Although Section 28 of the Act is not akin to a proceeding under Order 21 of the Code of Civil Procedure, necessarily, the petitioner has sought to get possession of the property, which is a further proceeding subsequent to Ext.P2 decree. The decree

itself is called in question in the appeal. Thus, the lower Appellate Court has thought to defer further proceedings pursuant to Ext.P2 decree, until a decision is taken in the appeal. If at all Ext.P2 decree is set aside, necessarily all proceedings including the application filed by the petitioner would no longer survive.

12. Viewed in the above legal and factual background, especially since the lower Appellate Court :: 8 ::

has not expressed anything on the merits of the decree, I do not find any error in Ext.P27 order warranting its interference by exercising the supervisory powers of this Court under Article 227 of the Constitution of India.

13. It is trite; the power of superintendence of

this Court under Article 227 of the Constitution of India is to be sparingly exercised and in exceptional cases, to keep the courts of the District Judicature/Tribunals within their bounds of authority and not to sit in appeal over their decisions.

14. At the cost of repetition, this Court reiterates that Ext.P27 is an order that has been passed by the

lower Appellate Court by exercising discretionary powers. Thus, I am not inclined to interfere with such discretionary power, which I find is reasonable and justifiable.

15. After arriving at the said conclusion, the learned counsel appearing for the petitioner submitted :: 9 ::

that, notwithstanding the confirmation of Ext.P27 order, this Court may direct the lower Appellate Court to consider and dispose of CMA 116/2022, expeditiously. I accept the said submission. Resultantly, confirming Ext.P27 order, I direct the Court of the IVth Additional District Judge, Thrissur to consider and dispose of CMA 116/2022, in accordance

with law and as expeditiously as possible, after affording the petitioner and the respondents an opportunity of being heard. Sd/- C.S.DIAS JUDGE jes :: 10 ::
APPENDIX OF OP(C) 1483/2023 PETITIONERS EXHIBITS: Exhibit-P1 THE PHOTOCOPY OF JUDGMENT DATED 29-11-2018 IN O.S.NO.4011/2017 ON THE FILES OF THE PRINCIPAL MUNSIF COURT, THRISSUR Exhibit-P2 THE PHOTOCOPY OF DECREE DATED 29-11-2018 IN O.S. NO. 4011/2017 ON THE FILES OF THE PRINCIPAL MUNSIF COURT, THRISSUR Exhibit-P3 THE PHOTOCOPY OF I.A. NO. 01/2020 IN O.S. NO. MUNSIF COURT, THRISSUR Exhibit-P4 THE PHOTOCOPY OF THE EXECUTION PETITION FILED BY THE DECREE HOLDER AS E.P. NO. THE PRINCIPAL MUNSIF COURT, THRISSUR Exhibit-P5 THE PHOTOCOPY OF DEED OF ASSIGNMENT NO. REGISTRAR'S OFFICE Exhibit-P6 THE PHOTOCOPY OF I.A. NO. 06/2020 IN O.S. NO. MUNSIF COURT, THRISSUR Exhibit-P7 THE PHOTOCOPY OF ORDER DATED 18-12-2020 OF THE PRINCIPAL MUNSIF COURT, THRISSUR IN I.A. NO. 06/2020 IN O.S. NO. 4011/2017 Exhibit-P8 THE PHOTOCOPY OF E.A. NO. 1633/2020 IN E.P. NO. THE PRINCIPAL MUNSIF COURT, THRISSUR Exhibit-P9 THE PHOTOCOPY OF ORDER DATED 18-12-2020 OF THE PRINCIPAL MUNSIF COURT, THRISSUR IN E.A. NO. 1633/2020 IN E.P. NO. 1281/2020 IN O.S. :: 11 :: NO. 4011/2017 Exhibit-P10 THE PHOTOCOPY OF ORDER DATED 19-02-2021 OF THE PRINCIPAL MUNSIF COURT, THRISSUR IN E.P. NO. 1281/2020 IN O.S. NO. 4011/2017 Exhibit-P11 THE PHOTOCOPY OF C.A. NO.

43/2021 IN E.P. NO. THE PRINCIPAL MUNSIFF COURT, THRISSUR. Exhibit-P12 THE PHOTOCOPY OF I.A. NO. 9/2021 IN O.S. NO. MUNSIFF COURT, THRISSUR. Exhibit-P13 THE PHOTOCOPY OF I.A. NO. 10/2021 IN O.S. NO. MUNSIFF COURT, THRISSUR. Exhibit-P14 THE PHOTOCOPY OF I.A. NO. 11/2021 IN O.S. NO. MUNSIFF COURT, THRISSUR. Exhibit-P15 THE PHOTOCOPY OF I.A. NO. 12/2021 IN O.S. NO. MUNSIFF COURT, THRISSUR. Exhibit-P16 THE PHOTOCOPY OF ORDER DATED 11-03-2022 OF THE PRINCIPAL MUNSIFF COURT, THRISSUR IN I.A. NO. 11/2021 IN O.S. NO. 4011/2017. Exhibit-P17 THE PHOTOCOPY OF ORDER DATED 11-03-2022 OF THE PRINCIPAL MUNSIFF COURT, THRISSUR IN I.A. NO. 12/2021 IN O.S. NO. 4011/2017. Exhibit-P18 THE PHOTOCOPY OF COUNTER AFFIDAVIT DATED

14-03-2021 FILED BY THE THIRD RESPONDENT IN I.A. NO. 9/2021 IN O.S. NO. 4011/2017 ON THE FILES OF THE PRINCIPAL MUNSIFF COURT, THRISSUR.

Exhibit-P19 THE PHOTOCOPY OF COUNTER AFFIDAVIT DATED 14- 03-2021 FILED BY THE THIRD RESPONDENT IN I.A. :: 12 :: NO. 10/2021 IN O.S. NO. 4011/2017 ON THE FILES OF THE PRINCIPAL MUNSIFF COURT, THRISSUR. Exhibit-P20 THE PHOTOCOPY OF JUDGMENT DATED 30-08-2022 OF THIS HON'BLE COURT IN O.P.(C) NO. 1609/2022. Exhibit-P21 THE PHOTOCOPY OF COMMON ORDER DATED 18-

10-2022 OF THE PRINCIPAL MUNSIFF COURT, THRISSUR IN I.A. NO. 9/2021 & I.A. NO. 10/2021 IN O.S. NO. 4011/2017.

Exhibit-P22 THE PHOTOCOPY OF APPEAL MEMORANDUM IN C.M.A NO. 116/2022 ON THE FILES OF THE IV ADDITIONAL DISTRICT JUDGE, THRISSUR. Exhibit23 THE PHOTOCOPY OF SALE DEED NO. 1304/2023 DATED 30-03-2023 OF THRISSUR SUB REGISTRAR'S OFFICE. Exhibit-P24 THE PHOTOCOPY OF I.A. NO. 07/2023 IN O.S. NO. MUNSIFF COURT, THRISSUR. Exhibit-P25 THE PHOTOCOPY OF I.A. NO. 05/2023 IN C.M.A NO. DISTRICT JUDGE, THRISSUR. Exhibit-P26 THE PHOTOCOPY OF COUNTER AFFIDAVIT DATED

25-05-2023 FILED BY THE 3RD RESPONDENT IN I.A. NO. 05/2023 IN C.M.A NO. 116/2022 ON THE FILES OF THE IV ADDITIONAL DISTRICT JUDGE, THRISSUR. Exhibit-P27 THE PHOTOCOPY OF ORDER (INCORRECTLY MENTIONED AS JUDGMENT) DATED 25-05-2023 IN I.A. NO. 05/2023 IN C.M.A NO. 116/2022 ON THE FILES OF THE IV ADDITIONAL DISTRICT JUDGE, THRISSUR.

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