

**Rajan vs Devan**

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**SooperKanoon Citation :** [sooperkanoon.com/1391906](https://sooperkanoon.com/1391906)

**Court :** Kerala

**Decided On :** Jun-12-2023

**Judge :** Honourable Mr. Justice P.Somarajan

**Appeal No. :** OP(C)/1939/2022

**Appellant :** RAJAN

**Respondent :** DEVAN

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE P.SOMARAJAN  
MONDAY, THE 12th DAY OF JUNE 2023 / 22ND JYAISHTA, 1945  
OP(C) NO. 1939 OF 2022 AGAINST THE ORDER DATED 17.09.2022  
IN EP No.43/2021 IN OS No.61/2017 OF MUNSIF COURT,  
OTTAPPALAM

PETITIONER/RESPONDENT (JUDGMENT DEBTOR)/DEFENDANT:  
RAJAN, AGED 45 YEARS, S/o KRISHNAN, KARATHPARAMBIL,  
KARAKKAD AMSOM DESOM, KAVALAPPARA POST, OTTAPALAM  
TALUK, PALAKKAD DISTRICT, PIN - 679523 BY ADVS. R.SREEHARI  
HAMZA A.V. RESPONDENT/PETITIONER (DECREE  
HOLDER)/PLAINTIFF DEVAN, AGED 57 YEARS, S/o LATE RAMAN,

KALATHILKKUNDIL HOUSE, VANIYAMKULAM POST, OTTAPALAM  
TALUK, PALAKKAD DISTRICT, PIN - 679522 BY ADV P. JAYARAM  
THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 12.06.2023,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:  
OP(C) No.1939 of 2022 2

## **JUDGMENT**

The petitioner came up under Article 227 of the Constitution challenging the upset price fixed in respect of the property sought to be sold in court auction for realization of the decree amount and also the value shown in the proclamation. The grievance of the petitioner is that the building situated in the property was not separately valued and the value of the building was not separately shown in the proclamation schedule. It is permissible to show the entire value of the property without any bifurcation, for which there is no legal impediment. At the fag end, the learned counsel for the petitioner sought permission to pay the entire amount in six equal monthly installments, which was conceded by the learned counsel for the respondent. As such, there will be a direction to pay the entire amount due in six equal installments including interest accrued thereof starting from the first day of July 2023. It shall be paid on or before 10th of every month. Till that time, the sale OP(C) No.1939 of 2022 3 proceeding will stand deferred. Default in making any of the said payments would visit with the consequences thereof and the execution court will be at liberty to proceed with the execution and sale of property. The original petition is disposed of accordingly. Sd/- P.SOMARAJAN JUDGE DMR/-  
OP(C) No.1939 of 2022 4 APPENDIX OF OP(C) 1939/2022 PETITIONER'S EXHIBITS Exhibit P1 TRUE COPY OF THE DECREE PASSED IN

O.S.NO.61/2017 DATED 16/11/2020 OF MUNSIFF COURT, OTTAPALAM  
ALONG WITH THE MEDIATION AGREEMENT FORMING PART OF THE  
DECREE

Exhibit P2 TRUE COPY OF THE JUDGMENT IN O.S.NO.61/2017 DATED  
16/11/2020 OF MUNSIFF COURT, OTTAPALAM Exhibit P3 TRUE COPY OF  
THE E.P.NO.43/2021 IN O.S.NO.61/2017 FILED BY THE RESPONDENT  
AGAINST THE PETITIONER BEFORE MUNSIFF COURT, OTTAPALAM Exhibit

P4 TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER IN E.P.NO.43/2021 IN O.S.NO.61/2017 BEFORE THE MUNSIF COURT, OTTAPALAM DATED 17/01/2022 Exhibit P5 TRUE COPY OF THE PROPERTY SCHEDULE SUBMITTED

BY THE RESPONDENT ALONG WITH THE DRAFT SALE PROCLAMATION STATING THE UPSET VALUE OF THE PROPERTY AT RS.6,00,000/- SOUGHT TO BE PROCEEDED IN EXECUTION Exhibit P6 TRUE COPY OF THE OBJECTION DATED 13/07/2022 FILED BY THE PETITIONER AGAINST THE DRAFT SALE PROCLAMATION IN E.P.NO.43/2021 IN O.S.NO.61/2017 BEFORE THE MUNSIF COURT, OTTAPALAM Exhibit P7 TRUE COPY OF THE PROPERTY SCHEDULE SUBMITTED BY THE RESPONDENT ALONG WITH THE FRESH DRAFT SALE PROCLAMATION STATING THE UPSET VALUE OF THE PROPERTY WITH A RESIDENTIAL BUILDING THEREIN AT RS.6,00,000/- SOUGHT TO BE PROCEEDED IN EXECUTION Exhibit P8 TRUE COPY OF THE OBJECTION DATED 30/08/2022 FILED BY THE PETITIONER/JUDGMENT DEBTOR AGAINST THE FRESH DRAFT SALE PROCLAMATION IN E.P.NO.43/2021 IN O.S.NO.61/2017 BEFORE THE MUNSIF COURT, OTTAPALAM

OP(C) No.1939 of 2022 5 Exhibit P9 TRUE COPY OF THE ORDER PASSED BY THE MUNSIF COURT, OTTAPALAM IN E.P.NO.43/2021 IN O.S.NO.61/2017 DATED 17/09/2022 Exhibit P10 TRUE COPY OF THE SALE NOTICE WITH SCHEDULE IN E.P.NO.43/2021 IN O.S.NO.61/2017 OF MUNSIF COURT, OTTAPALAM Exhibit P11 TRUE COPY OF THE JUDGMENT IN O.P.(C).NO.350 / 2012 DATED 04/07/2012 PASSED BY THE HON'BLE HIGH COURT OF KERALA Exhibit P12 TRUE COPY OF THE JUDGMENT IN F.A.O.NO.165/2017 DATED 03/11/2017 BY THE HON'BLE HIGH COURT OF KERALA // TRUE COPY // P.A. TO JUDGE

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