

Prakash vs Remabhai

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Court : Kerala

Decided On : Feb-23-2022

Judge : Honourable Mr. Justice a. Badharudeen

Appeal No. : OP(C)/142/2022

Appellant : Prakash

Respondent : Remabhai

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A. BADHARUDEEN
WEDNESDAY, THE 23RD DAY OF FEBRUARY 2022 / 4TH
PHALGUNA, OP(C) NO. 142 OF 2022 AGAINST THE ORDER IN EP
106/2015 IN OS 461/2013 OF MUNSIF COURT, KARUNAGAPPALLY

PETITIONER/JUDGMENT DEBTOR: PRAKASH, NOW AGED 58
YEARS, S/O. SOMAN, RESIDING AT KALLETHU VEEDU, NJAKKANAL
MURI, OACHIRA VILLAGE, KARUNAGAPPALLY TALUK, NJAKKANAL
P.O, KOLLAM-690533. BY ADVS. SMT.M.G. LISHA M.G.
RESPONDENT/DECREE HOLDER: REMABHAI, NOW AGED 61
YEARS, D/O.RAJAMMA, REMA BHAVAN, CLAPPANA VADAKKUM
MURI, CLAPPANA VILLAGE, KARUNAGAPPALLY, CLAPPANA P.O.,

KOLLAM-690546. THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON 23.02.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

This Original Petition under Article 227 of the Constitution of India has been filed by the Judgment Debtor in E.P.No.106 of 2015 in O.S.No.461/2013 pending before the Munsiff Court, Karunagapally.

2. In this case, Adv.P.B.Sahasranaman and

T.S.Harikumar originally filed vakalath for the petitioner and moved the original petition and at the time of first hearing submitted that they had relinquished the vakalath and submitted so in open court. Adv.Hyma.S, submitted that she appears for the petitioner.

3. At the time of hearing, this Court

directed the Judgment Debtor to deposit Rs.1,00,000/- within 30 days, when the sale proposed on 21.01.2022 was sought to be stayed. The interim order is as follows: The judgment debtor in E.P.No.106/2015 in O.S.No.461/2013 has filed this Original Petition today when

the property belonged the judgment

debtor was posted for sale today at about 1.45 p.m.

2. According to the learned

counsel for the petitioner, the upset price fixed for a total extent of 1.66 ares of property is very low and the same is only Rs.40,000/-. However, the learned counsel fairly conceded that the judgment debtor not raised any objection while fixing the upset price or not produced any documents to substantiate the value of the property in excess of Rs.40,000/- that has been fixed by the execution court.

3. Going by Ext.P2, sale

proclamation, as of now Rs.3,67,935/- is due. Then it is submitted by the learned counsel for the petitioner that the petitioner is ready to deposit a portion of the decree as directed by this Court.

4. Though on merits I am not

convinced, I am inclined to postpone the sale proposed today, if the sale is not completed already by this time at 2.30 p.m. on 21.01.22 on condition that, the petitioner herein shall deposit or pay Rs.1,00,000/- within 30 days from today with liberty to decree holder to release the same.

5. Issue notice to the respondents. The sale of the property stands adjourned to 25.02.2022. Post on 23.02.2022 to verify whether the interim order has been complied with.

4. At the time of hearing on 21.01.2022

itself, it was found that the upset price fixed by the court is not low and no specific challenge raised by the Judgment Debtor before fixing the upset price. No challenge raised as regards to fixation of upset price at present also by filing objection even after sale was proclaimed. Therefore, the challenge against the upset price cannot be sustained.

5. Then the learned counsel for the

petitioner, Adv.P.B.Sahasranaman submitted at the time of admission hearing that the petitioner was ready to pay the due decree debt by instalments. Believing the submission, the Judgment Debtor was directed to deposit Rs.1,00,000/- within 30 days from 21.01.2022. But Adv.Hyma.S now appearing for the petitioner would submit that the amount not deposited so far, as directed.

6. Thus, it appears that the petitioner

is not ready to pay off the decree debt as agreed earlier. The petitioner also failed to comply the direction issued by this Court. On perusal of the sale proclamation to

sell only

1.6 Ares of property, it could not be held

that the upset price is low as no materials available to see otherwise. Therefore, this Original Petition is dismissed with direction to the execution court to go with sale adjourned to 25.02.222 without fail. Registry is directed to communicate this

order to the execution court today itself by

e-mail. Sd/- A.BADHARUDEEN, JUDGE. ww APPENDIX OF OP(C) 142/2022
PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE PHOTOSTAT COPY OF THE
JUDGMENT IN O.S.NO.461 OF 2013 OF THE MUNSIFF COURT,
KARUNAGAPPALLY, DATED 28.2.2015. EXHIBIT P2 TRUE PHOTOSTAT COPY
OF THE SALE PROCLAMATION ISSUED BY THE MUNSIFF COURT,
KARUNAGAPPALLY IN E.P.NO.106/2015, DATED 4.1.2022.

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