

Mini Vs. Abdul Kareem

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Court : Kerala

Decided On : Jun-15-2015

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : Mini

Respondent : Abdul Kareem

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN MONDAY,THE15H DAY OF JUNE201525TH JYAISHTA, 1937 Mat.Appeal.No.234 of 2012 () -----
APPELLANT(S)/APPELLANTS/RESPONDENTS1TO3:

----- 1. MINI D/O. KRISHNAN AND W/O. RAJAN, THALEKKARA HOUSE KARIKKAD DESOM & VILLAGE, THALAPPILLY TALUK.

2. RAHUL RAJAN MINOR, S/O. MINI AND RAJAN, DO. DO.

3. MIDHUN RAJAN MINOR, D/O. MINI AND RAJAN DO. DO. MINORS ARE REPRESENTED BY THEIR GUARDIAN MOTHER, 1ST RESPONDENT MINI. BY ADV. SRI.P.V.CHANDRAMOHAN RESPONDENT(S)/RESPONDENT NO. 1/CLAIM PETITIONER :

----- 1.

ABDUL KAREEM REPRESENTED BY POWER OF ATTORNEY HOLDER, KAMARUDDIN AGED 46 YEARS, S/O. ALI ABDUL RAHMAN VELLIYATTILL HOUSE, KADAVALLUR VILLAGE KOTATTIKKARA P.O., THRISSUR.

2. RAJAN S/O. SANKUNNY, PALEKKARA HOUSE KADAVALLUR DESOM AND VILLAGE, THALAPPILLY TALUK THRISSUR DISTRICT. R1 BY ADV. SRI.SANTHEEP ANKARATH ADV. SRI.SUMODH MADHAVAN NAIR THIS MATRIMONIAL APPEAL HAVING BEEN FINALLY HEARD ON 15/06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: VS C.K.ABDUL REHIM & K.RAMAKRISHNAN, JJ -----
Mat.Appeal.No.234 of 2012 ----- Dated this the 15th day of June, 2015

JUDGMENT

K.RAMAKRISHNAN, J Respondents 1-3 in I.A.No.22/2011 in O.P.No.467/2010 of Family Court, Thrissur, are the appellants herein. The appellants herein have filed O.P.No.467/2010 before the Family Court, Thrissur, for realisation of money being the value of 60 sovereigns of gold ornaments and other monetary reliefs, along with the petition, the appellants filed I.A.1862/2010 for attachment and I.A.1859/2010 for injunction restraining the second respondent herein from alienating the property and the Family Court has ordered attachment and injunction on 22.03.2010. On knowing about the attachment, the first respondent herein filed I.A.22/2011 for lifting the attachment, stating that he came to know about the attachment only after the sale was effected and sale was effected before the attachment was proclaimed and Mat.Appeal.No.234 of 2012 effected and he wanted to lift the attachment stating that he is a bonafide purchaser for valuable consideration. The appellants filed counter, denying the allegations. After considering the submissions of both parties and after verifying the records, the Family Court allowed the petition and lifted the attachment as prayed for. Aggrieved by the same, the present appeal has been preferred by the respondents 1-3, who are the petitioners in the main original petition before the court below.

2. Heard the learned counsel for appellants and the counsel for first respondent.

3. The learned counsel for the appellants submitted that the attachment was ordered on 22.03.2010 and the sale deed was executed on 24.03.2010 and that shows that the sale was effected at the time when the attachment was in force. But the lower court had allowed the application, on the ground that the notice of attachment was served on the respondents only on 25.03.2010 at about 11 a.m., before which the property has been sold. So, at the time when the Mat.Appeal.No.234 of 2012 3 attachment was effected, there is no marketable title vested in the second respondent and the petitioner in the claim petition has become the owner of the property, which is not correct. The lower court has not taken evidence on this aspect and without considering the fact that between 22.03.2010 and 25.03.2010, all the formalities of attachment has been effected and parties were aware of the attachment. So the counsel for the appellant submitted that the order passed by the court below is unsustainable in law. He also relied on sub rule 3 of Rule 54 of Order XXI as amended by Kerala Rules, in support of his submission.

4. The counsel for the respondent submitted that, even going by the rules, the attachment will take effect from the date on which it was effected or knowledge of the order of attachment, or the date on which the order was duly proclaimed under Sub rule 2, whichever is earlier. Here, as per the Amin's report, It is seen that all these things are done only on 25.03.2010 and the sale was effected on 24.03.2010, before the Mat.Appeal.No.234 of 2012 4 attachment was effected. So, the court below was perfectly justified in allowing the application.

5. It is an admitted fact that the appellants herein have filed the original petition before the court below for realisation of amount due, including the value of gold ornaments, from the second respondent herein and along with the petition, they filed I.A.1859/2010 for injunction restraining the respondent from entering the property and I.A.1862/2010 for attachment before the judgment and it is seen from the records that the attachment was ordered on 22.03.2010. Admittedly, the property was sold on 24.03.2010. Sub section 3 of Rule 54 of Order XXI as amended by Kerala Rules reads as follows; "The attachment shall be deemed to have taken as against the transferee without consideration, from the date of order of attachment and as against all other persons from the date on which they

respectively had knowledge of the order of attachment or the date on which the order was duly proclaimed under sub rule 2, whichever is earlier." Mat.Appeal.No.234 of 2012 5 6. In this case, the Amin's report will go to show that the attachment was proclaimed and the notice of attachment was served on the respondents in the main Original Petition only on 25.03.2010. So, that will go to show that the attachment was proclaimed and effected only on 25.3.2010 and the same took place on 24.3.2010. There is no evidence to show that the first respondent herein is not a bonafide purchaser for valuable consideration. If he is a bonafide purchaser for valuable consideration, then, second part of sub Rule 3 of Rule 54 of Order XXI as amended by the Kerala Rules will apply. If that be the case, the attachment came to the knowledge of the claim petitioner only on 25.03.2010, by the time the sale has already been taken place. So, under the circumstances, there is no merit in the submission made by the learned counsel for the appellants that the court below had committed illegality in allowing the application filed by the first respondent and lifting the attachment and the appeal lacks merits, the same is liable to be dismissed. We do so. Mat.Appeal.No.234 of 2012 6 In the result, the appeal is dismissed. However, considering the fact the the original petition was of the year 2010, the court below is directed to expedite disposal of the original petition at the earliest. Interim order of stay granted by this Court will stands vacated. Communicate this judgment to the court below at the earliest. Sd/- C.K.ABDUL REHIM, JUDGE Sd/- K.RAMAKRISHNAN, JUDGE vs /TRUE COPY/ PA TO JUDGE

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