

Chenthamarakshan Vs. Sheela

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Court : Kerala

Decided On : Jul-29-2015

Judge : Honourable Mr.Justice C.K.Abdul Rehim

Appellant : Chenthamarakshan

Respondent : Sheela

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM & THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN WEDNESDAY, THE 29TH DAY OF JULY 2015 7TH SRAVANA, 1937 OP (FC).No. 65 of 2015 (R) ----- AGAINST THE

JUDGMENT

IN OP 202007 of FAMILY COURT, PALAKKAD PETITIONER/RESPONDENT: ----- CHENTHAMARAKSHAN, AGED 65 YEARS, S/O.KITTA, PAZHAMEDU HOUSE, NAPPAN VEEDU CHALLA, PATTATHALACHI, ELAPPULI PALAKKAD BY ADV. SRI.VINOD KUMAR.C RESPONDENTS/PETITIONERS: ----- 1. SHEELA W/O.CHENTHAMARAKSHAN, ARANJANAM POTTA HOUSE KALLUKUTTIYAL, POLPULLI VILLAGE PALAKKAD(MENTALLY III REP BY HER DAUGHTER SINJU C)678001 2. SINJU D/O.CHENTHAMARAKSHAN, ARANJANAM POTTA HOUSE KALLUKUTTIYAL, POLPULLI VILLAGE, PALAKKAD-678001 R1&2 BY ADV. SRI.SAJAN VARGHEESE K. R1&2 BY ADV. SRI.LIJU. M.P THIS OP

(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 29-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (FC).No. 65 of 2015 (R)

----- APPENDIX PETITIONER'S EXHIBITS: -----
EXT.P1:-TRUE COPY OF THE

JUDGMENT

IN OP202007 DTD202/2009 EXT.P2:-TRUE COPY OF RETURNED PETITION IN
OP202007 DTD246/2014 RESPONDENTS' EXHIBITS:NIL -----
/TRUE COPY/ P.S TO JUDGE cl C.K. ABDUL REHIM & K. RAMAKRISHNAN, JJ.

..... O.P.(FC)No.65 of 2015
..... Dated this the 29th day of July, 2015.

JUDGMENT

Ramakrishnan,J: This original petition is filed by the judgment debtor in the lower court in OP.No.20/2007 of the Family Court, Palakkad challenging the order returning Ext.P2 under Article 227 of the Constitution of India.

2. It is alleged in the petition that the petitioner and 1st respondent are man and wife and the second respondent herein was born to them in that wedlock. The respondents herein filed O.P.No.20/2007 before the Family Court, Palakkad against the petitioner seeking past maintenance and also for marriage expenses to the second petitioner and the court below had directed to pay monthly maintenance to respondents 1 and 2 at the rate of Rs.2,000/- each per month from 10.1.2004 onwards and also directed to pay Rs.1,50,000/- to the second respondent as marriage expenses. No appeal has been preferred against the same and that has become final. They filed E.P.No.18/2011 for executing the decree. They have sought for sale of the property having an extent of 2 acres O.P.(FC)No.65 of 2015 2 and simultaneously for realization of the amount by detaining the petitioner in civil prison. The petitioner filed Ext.P2 petition before the Family Court stating that he is prepared to give 40 cents of land to the respondents as settlement of the entire decree amount and for that purpose he wanted to lift the attachment. The court below returned the petition on the ground that since charge has been created in respect of the entire property as per the decree, the prayer in the petition cannot be granted. That order is being

challenged by the petitioner by filing this petition.

3. Heard counsel for the petitioner and the respondents.

4. Counsel for the petitioner submitted that he is prepared to give 40 cents of land which will be sufficient to meet the decree debt in favour of the respondents or he must be given permission to sell a portion of the property to pay the decree debt. The court below was not justified in ordering simultaneous execution and also returning Ext.P2 petition.

5. On the other hand, counsel for the respondents submitted that even the entire property is not sufficient to meet the decree debt as now the amount due has become more O.P.(FC)No.65 of 2015 3 than seven lakhs and it is a wet land and no prospective purchaser will come and pay any higher amount.

6. On going through the allegations and also the nature of relief claimed, this Court felt that there is nothing wrong in the order passed by the court below in returning Ext.P2 petition. If the petitioner has got a case that for satisfying the decree debt the entire property under charge by virtue of the decree need not be sold, then he has to apply the court below to carve out the area by appointing a commissioner and value the same and carve out the area required to meet the decree debt. Without filing such an application, filing application to lift the attachment, agreeing to sell 40 cents is not sufficient unless the other party is also agreeable for the same as part of settlement in full satisfaction of the amount due as per that decree. So under such circumstances there is no illegality committed by the court below in returning Ext.P2 petition warranting interference of this Court under Article 227 of the Constitution of India. Since law permits simultaneous execution by arrest and detention and also sale of property, it cannot be said that the court below was not justified in proceeding with O.P.(FC)No.65 of 2015 4 both mods of execution claimed simultaneously. If the petitioner moves the Family Court to appoint a commissioner to carve out the area required for satisfying the amount under execution, then court below is directed to allow the same and after carving out the property sufficient for meeting the satisfaction of the amount already in execution, then court below shall proceed with the case in respect of that portion of the property first in accordance with law. It is settled law that if the entire

property is not required to be sold for satisfaction of the decree amount, then it is the duty of the court to carve out that portion which alone is required to satisfy the decree and an opportunity will have to be given to the judgment debtor for that purpose. In such circumstances, if the petitioner files an application before the court below for that purpose, then court below is directed to allow the petition and appoint a commissioner for enabling the judgment debtor to carve out the portion with the help of an expert valuer and file a plan and report before the court below and the court below shall consider and pass appropriate orders in the execution petition on that basis. Till that is complied with, the court below is O.P.(FC)No.65 of 2015 5 directed to keep in abeyance the coercive steps initiated under Order XXI Rule 37 of the Code of Civil Procedure. The court below is directed to expedite these things within a period of two months. With the above directions and observations, this petition is disposed of. Office is directed to communicate a copy of this order to the court below at the earliest. Sd/- C.K. ABDUL REHIM, JUDGE. Sd/- K. RAMAKRISHNAN, JUDGE. /true copy/ P.S to Judge cl O.P.(FC)No.65 of 2015 6

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