

Varkey Vs. Bhaskaran Nair

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Court : Kerala

Decided On : Sep-09-1957

Reported in : AIR1958Ker78

Judge : Sankaran and; Raman Nayar, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 47

Appeal No. : A.S. No. 135 of 1957

Appellant : Varkey

Respondent : Bhaskaran Nair

Advocate for Pet/Ap. : M. Ramanatha Pillai, Adv.

Disposition : Appeal allowed

Judgement :

Sankaran, J.

1. The 5th defendant has preferred this appeal against the lower Court's order objecting to the execution of the decree and the sale of his property On the basis of the proclamation schedule filed by the decree-holder. If the objections were only about the description of the properties proclaimed, the present appeal would not have been competent. But from the several objections raised by the 5th defendant

we see that some of them go far deeper and question the manner in which the decree-holder is seeking to enforce his decree. Such objections would come under Section 47, Civil P. C. The decree has specified separately the extent of the liability of each set of defendants and has directed that the amount due from each set has to be recovered from the particular property in the possession of that set of defendants.

The Proclamation schedule has ignored this aspect of the decree and has been drawn up in such a way that for the entire amount due from all sets of defendants, the Property of each set could be sold. This is not permitted by the decree. Execution can proceed only in accordance with the terms of the decree and a fresh proclamation has to be drawn up specifying the amount due from each group of defendants and also the particular property made liable for that amount. The lower Court appears to have primarily rejected the 5th defendant's objection petition without adverting to the aforesaid vital aspects.

2. In the result this appeal is allowed with costs and the order of the lower Court is set aside and a fresh proclamation is directed to be drawn up as indicated above.