

Varkey John Vs. Varkey Thomas and ors.

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Court : Kerala

Decided On : Dec-17-1956

Reported in : AIR1957Ker47

Judge : Kumara Pillai and; T.K. Joseph, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 21, Rule 90

Appeal No. : Second Appeal No. 89 of 1955 (E)

Appellant : Varkey John

Respondent : Varkey Thomas and ors.

Advocate for Def. : K.T. Ninan, Adv. (for No. 2) and; C.K. Sivasankara Panicker, Adv. (for No. 3)

Advocate for Pet/Ap. : K.K. Mathew, Adv.

Disposition : Appeal dismissed

Judgement :

Kumara Pillai, J.

1. The only point pressed in this Second Appeal is that the Court had no jurisdiction to sell the plaint' property in execution of Ext. A decree. That the plaint property is one of the properties liable to be sold in execution of that decree by the

terms thereof is not disputed and is clear from the decree itself. But there is a direction in the said decree that the properties of defendant 3 therein should be sold first & that the properties belonging to defendant 4, who is the appellant here, should be sold only after the sale of defendant 3's properties. As the plaintiff property was sold in violation of that direction it is contended that the sale was without jurisdiction. A petition to set aside the sale on this ground has already been dismissed for default, and it is after, that dismissal that this suit has been filed.

When the decree directs the sale of the property, it is wrong to say that the sale in execution is without jurisdiction although such sale was not in conformity with the direction in the decree regarding the order of the sales of the various items. The direction regarding the order in which the sales are to be made is only a direction regarding the manner of the exercise of the jurisdiction to sell and does not affect the jurisdiction itself. We are fortified in the view we have taken by the decision in *A. M. Mary Fernandez v. M. Madhavi*, 1955 Ker LT 46: (AIR 1955 Trav-C 92) (A). We therefore hold that the sale was not without jurisdiction and dismiss this second appeal. Only one set of costs is allowed to the respondents and it will be shared equally by respondents 2 and 3.

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