

**Seetha Vs. Usha Kumari**

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**Court :** Kerala

**Decided On :** Oct-27-2010

**Judge :** Thomas P. Joseph, J.

**Appeal No. :** O.P.(C) No.472 of 2010

**Appellant :** Seetha

**Respondent :** Usha Kumari

**Advocate for Pet/Ap. :** SRI.N.MANU THAMPI, Adv.

**Judgement :**

O R D E R

**THOMAS P. JOSEPH, J.**

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O.P.(C) No.472 of 2010  
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Dated this the 27th day of October, 2010.

Petitioner is judgment debtor No.2 in E.P.No.244 of 2008 in O.S.No.289 of 1999 of the court of learned Sub Judge, Kollam. The decree for mesne profit is being

executed against petitioner, as the learned counsel submits. 3 = cents of property belonging to the petitioner is being brought up for sale and the sale is scheduled to be held on 28.10.2010. Grievance of the petitioner is that the upset price fixed (Rs.1,40,000/-) by the executing court is meager considering actual value of the property which according to the petitioner is Rupees ten lakhs per cent. The amount due to the respondent as per decree is Rs.1,00,651/-. In the circumstances this petition.

2. Even as per the statement of petitioner it is based on the valuation certificate and encumbrance certificate produced by petitioner that executing court has fixed upset price as Rs.1,40,000/-. No better evidence is adduced by the petitioner to show that property would fetch a higher value. Hence I do not find reason to interfere with the sale proclamation.

3. It is submitted by learned counsel that petitioner is an Anganwadi Worker having two issues and that she is unable to raise the amount immediately. Learned counsel requests that six (6) months' time may be granted to pay the amount. Having heard on the financial condition of petitioner I am inclined to grant three (3) months' time to her for payment of the amount due under the decree. Until then sale of property scheduled to be held on 28.10.2010 will stand in abeyance.

Resultantly this petition is disposed of in the following lines:

i. Petitioner is granted three (3) months' time from 15.11.2010 to pay the amount due under the decree.

ii. Sale scheduled to be held on 28.10.2010 will stand adjourned to a day after three (3) months from 15.11.2010 but, subject to the following conditions:

(a) Petitioner shall file affidavit in the executing court before the time fixed for sale on 28.10.2010 waiving fresh proclamation for such sale.

(b) Petitioner shall deposit on or before 15.11.2010 in the executing court for payment to the respondent not less than Rs.20,000/- (Rupees Twenty thousand only).

(b) Petitioner shall continue to deposit before the expiry of 15th day of every month beginning from 15.11.2010 in the executing court for payment to the respondent not less than Rs.20,000/- (Rupees Twenty thousand only) provided that by the last installment (ie. before the expiry of three months from 15.11.2010) the entire amount due under the decree is paid.

(c) It is directed that if the entire amount is not paid within the time aforesaid or, there is any two defaults in payment of the installment it will be open to the respondent to proceed with sale of the property.

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