

(2010) 07 KL CK 0125

High Court Of Kerala

Case No: Writ Petition (C) No. 20684 of 2010

T.R. Veerakumar

APPELLANT

Vs

Remani Thankachi and Renuka  
DeviRESPONDENT

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**Date of Decision:** July 2, 2010**Hon'ble Judges:** Thomas P. Joseph, J**Bench:** Single Bench**Advocate:** Benoy K. Kadavan, for the Appellant; No Appearance, for the Respondent

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### Judgement

Thomas P. Joseph, J.

Writ Petition is filed by the claim petitioner who is the husband of respondent No. 2/judgment debtor and who lost the claim petition and whose appeal was returned for presentation in the proper Forum. Respondent No. 1 obtained a decree for payment of money against respondent No. 2 in O.S. No. 465 of 1997. When respondent No. 1 launched execution against respondent No. 2 and attempted to bring the property of respondent No. 2 (which was placed under attachment) to sale, petitioner appeared with claim petition stating that as per settlement deed No. 3257 of 2000 he got right and title over a portion of the property attached (5 cents in extent). Executing court found that claim is not sustainable in so far as settlement deed in favour of petitioner is after the attachment was made and hence it does not bind respondent No. 1. Claim petition was dismissed. Matter was taken up in appeal before the learned District Judge. Learned District Judge observed that since the amount involved in the suit is more than Rs. 2,00,000/- appeal will not lie before that court in view of Section 13 of the Civil Courts Act. Accordingly memorandum of appeal was returned for presentation before proper Forum.

2. Learned Counsel submits that petitioner is not challenging the order of learned District Judge returning the memorandum of appeal, in this proceeding. Hence it is not necessary for me to go into the correctness of that order in this proceeding.

3. Request made by learned Counsel is that petitioner may be permitted to pay the amount due in installments to save the property covered by settlement deed No. 3257 of 2000. But since the claim petition has been dismissed and petitioner is not a party to the execution proceedings request of petitioner cannot be entertained.

4. At this stage learned Counsel stated that respondent No. 2, wife of petitioner is prepared to pay the amount due under the decree, given breathing time and is prepared to deposit Rs. 1,00,000/- (Rupees One lakh only) in the executing court within fifteen days and pay the balance amount within three months. Learned Counsel states that property is scheduled to be sold on 05.07.2010. Since respondent No. 2 has not come up with such a request I am unable to entertain the request made by the petitioner. It will be open to respondent No. 2 to make such a request in the executing court and if any such request is made the executing court will consider that request and pass appropriate orders after hearing respondent No. 1 as well, in accordance with law.

Writ Petition is closed with the above observation.