

(2011) 08 KL CK 0105
High Court Of Kerala
Case No: OP (C) No. 397 of 2010 (O)

Girija

APPELLANT

Vs

Vijaya Mohan Panicker

RESPONDENT

Date of Decision: Aug. 4, 2011

Hon'ble Judges: Thomas P. Joseph, J

Bench: Single Bench

Advocate: R. Gopan, for the Appellant; G. Sudheer, for the Respondent

Final Decision: Dismissed

Judgement

Thomas P. Joseph, J.

Petitioner is the judgment debtor in E.P. No. 131 of 2008 in O.S. No. 71 of 2003 of the court of learned Sub Judge, Neyyattinkara. For realisation of the amount due to the Respondent, property of Petitioner was sold on 10.08.2010 and the sale was confirmed on 11.10.2010. While so, Petitioner filed this Original Petition challenging sale of property on various grounds. When the matter came up for hearing on 20.10.2010 this Court issued a conditional order that further proceedings in E.P. No. 131 of 2008 in O.S. No. 71 of 2003 will stand in abeyance for one month on condition that Petitioner deposited in the executing court Rs. 1,70,000/- within three weeks. Learned Counsel submits that Petitioner has complied with the said order. Later as per order dated 16.06.2011 Respondent was permitted to withdraw the said amount and I am told that the amount has been withdrawn by the Respondent.

2. Now parties have reached a settlement as per which Respondent is agreed to setting aside the sale and its confirmation on condition that the further amount due to him is paid by Petitioner. Respondent has filed a statement dated 11.07.2011 as per which a further sum of Rs. 73,919/- is claimed to be due to him. of the said amount, Rs. 14,700/- is deposited by Respondent the executing court for purchase of non judicial stamp paper. It is agreed by both sides that the OP(C) No. 397/2010 2 said sum of Rs. 14,700/- could be withdrawn by Respondent from the executing court. The balance amount payable to the Respondent comes to Rs. 59,219/- (apart

from the sum of Rs. 1,70,000/- which is already withdrawn by the Respondent). Learned Counsel for Petitioner submits that Petitioner is ready to deposit the said sum of Rs. 59,219/- in the executing court within ten days from this day for payment to the Respondent. Learned Counsel for Respondent agreed to that course and the sale being set aside on deposit of the said amount. I am inclined to accept the settlement reached between parties.

Resultantly this Original Petition is allowed as follows:

- i. Sale of property conducted on 10.08.2010 and its confirmation will stand set aside on condition that Petitioner deposited in the executing court for payment to the Respondent Rs. 59,219/- (Rupees Fiftynine thousand two hundred and nineteen only) within ten days from this day.
- ii. On such deposit the sale of property and its confirmation will stand set aside.
- iii. It is directed that the sum of Rs. 14,700/- (Rupees fourteen thousand and seven hundred only) deposited by the Respondent in the executing court for purchase of non judicial stamp paper could be withdrawn by the Respondent.
- iv. It is also directed that the sum of Rs. 1,70,000/- already withdrawn by the Respondent shall be adjusted to the total amount due to the Respondent v. The sum of Rs. 59,219/- (Rupees Fiftynine thousand two hundred and nineteen only) if deposited by Petitioner within the aforesaid time can be withdrawn by the Respondent.
- vi. In case the sum of Rs. 59,219/- is not deposited within the period of ten days as above stated, this Original Petition will stand dismissed in confirmation of the sale and its confirmation.