

(2016) 06 KL CK 0046
High Court Of Kerala
Case No: C.R.P. No. 774 of 2013

Francis

APPELLANT

Vs

Alex Joseph

RESPONDENT

Date of Decision: June 23, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 58
- Limitation Act, 1963 - Article 134

Citation: (2017) 1 CivCC 511 : (2016) 4 KLT 651

Hon'ble Judges: K. Harilal, J.

Bench: Single Bench

Advocate: C.A. Chacko, C.M. Charisma and Megha K. Xavier, Advocates, for the Appellant

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

K. Harilal, J. - This Revision Petition is filed against an order dismissing the unnumbered Execution Petition of 2013, filed by the revision petitioner, for delivery of the property, purchased in court auction, before the Additional Sub Court, North Paravur. The Original Suit was one filed for specific performance of a contract and the suit was decreed in part, allowing him to recover Rs. 5,50,000/- with interest at the rate of 6% per annum, from the date of suit till realisation from the respondent, by selling the plaint schedule property. Since the respondent did not pay the amount, the revision petitioner filed E.P. No. 37/2007 to execute the above said decree and the property of the respondent was put in auction. The revision petitioner purchased the property in the court auction held on 26.7.2010 and the sale was confirmed on 30.9.2010. The petitioner produced the stamp paper for sale on 1.10.2010. But, thereafter, a third party filed E.A. No. 486/2011 in E.P. No. 37/2007, as claim petition and it was dismissed on 28.05.2013 only. Consequently, the sale certificate was issued to the revision petitioner on 29.6.2013. The revision

petitioner filed Execution Petition for delivery of the property on 8.7.2013. Even though the said petition was filed as E.P., the court below considered the same as an application under R. 95 of O.XXI of the Code of Civil Procedure i.e., application for delivery of property. The said application was not numbered on the ground that it was time barred. This is the grievance projected in this Civil Revision Petition and the petitioner sought for a direction to the court below to number the Execution Petition and dispose the same in accordance with law.

2. Going by the impugned order, passed by the court below, it is seen that the court below has not numbered the Execution Petition on the reason that the Execution Petition itself is a time barred one. As rightly submitted by the petitioner, even though the revision petitioner filed Execution Petition, the court below considered the same as an application under R.95 of O.21 of the C.P.C., seeking delivery of the property. In view of the fact that the delivery was sought for in the application, the court below is justified in considering the said application as an application under R.95 of O.21 of the C.P.C. If it is an order, on an application under R.95 of O.21 of the C.P.C., the question of limitation would come into play at first.

3. The question to be considered is, whether the non-issuance of sale certificate or pendency of claim petition under R.58 of O.21 of the Code of Civil Procedure, would defer the period of limitation, provided under Article 134 of the Limitation Act for seeking delivery of possession by a purchaser of immovable property at a sale in execution of a decree.

4. Going by Article 134 of the Limitation Act, it is stated that for delivery of possession by a purchaser of immovable property at a sale in execution of a decree, the application shall be filed within one year from the date on which the sale becomes absolute.

5. In the instant case, admittedly, the sale was confirmed on 30.9.2010; but the petitioner failed to file an application for delivery of the property within one year. The petitioner filed the application on 8.7.2013 only. Obviously, the application is barred by limitation.

6. The period of limitation of one year starts from the date on which sale becomes absolute. That day onwards the auction purchaser can seek delivery of possession, notwithstanding the non-issuance of the sale certificate or pendency of claim petition under R.58 of O.21 of the C.P.C.

7. This Court in **State Bank of Travancore v. Sankaran (1991 (1) KLT 121 : 1991 KHC 57)** held that though, grant of certificate is a precondition for court ordering delivery, grant of certificate under R.94 is not a precondition for filing application for delivery.

8. Therefore, this Court finds that since the grant or production of sale certificate is not a condition precedent for filing an application for delivery of possession by a

purchaser of immovable property at a sale in execution of a decree, the period of limitation of one year for filing application for delivery would run from the date on which the sale becomes absolute, notwithstanding the non-issuance of sale certificate or pendency of a claim petition under R.58 of O.21 of the C.P.C.

9. It follows that the petitioner could have filed an application seeking delivery of the property despite the non-issuance of sale certificate or the pendency of claim petition under R. 58 of O.21 of the C.P.C. The period of limitation provided under Article 134 of the Limitation Act would run notwithstanding the non-issuance of sale certificate or claim petition under R. 58 of O.21 of the C.P.C.

10. In the above analysis, I do not find any kind of illegality or impropriety in the impugned order under challenge. It is made clear that this order will not stand in the way of seeking remedies, if any, available to the petitioner in accordance with law.

11. This Civil Revision Petition is disposed of accordingly.