

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937

OP(C).No. 1250 of 2015 (O)

IN OS 115/1992 of SUB COURT, KASARAGOD

PETITIONER(S)/RESPONDENTS IN E.P/JUDGMENT DEBTORS IN O.S.:

1. STATE OF KERALA
REPRESENTED BY THE DISTRICT COLLECTOR,
KASARAGOD.
2. THE DIRECTOR OF AGRICULTURE,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.JIKKU JACOB.

RESPONDENT(S)/PLAINTIFF IN E.P/DECREE HOLDER IN O.S.:

C.MOHANKUMAR,
S/O.KODOTH NARAYANAN NAIR,
KUTTIKOLE, KUTTIKOLE VILLAGE,
KUTTIKOLE POST, KASARAGOD.

R1 BY ADV. SRI.K.G.GOURI SANKAR RAI.

THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 31-08-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

- EXHIBIT P1. TRUE COPY OF THE PLAINT.
- EXHIBIT P2. TRUE COPY OF THE WRITTEN STATEMENT.
- EXHIBIT P3. TRUE COPY OF THE JUDGMENT IN O.S.NO.115/1992 OF THE SUB JUDGE KASARAGOD DATED 30.09.1995.
- EXHIBIT P4. TRUE COPY OF THE DECREE IN O.S.NO.115/1992 OF THE SUB JUDGE, KASARAGOD DATED 30.09.1995.
- EXHIBIT P5. TRUE COPY OF THE INTERIM ORDER OF STAY.
- EXHIBIT P6. TRUE COPY OF THE INTERIM ORDER IN C.M.P.N.1285/1996 IN A.S.NO.195/1996.
- EXHIBIT P7. TRUE COPY OF THE ORDER IN C.M.P.NO.3373/1996.
- EXHIBIT P8. TRUE COPY OF THE JUDGMENT IN A.S.NO.195/1996.
- EXHIBIT P9. TRUE COPY OF THE EXECUTION PETITION.
- EXHIBIT P10. TRUE COPY OF THE COUNTER AFFIDAVIT FILED IN E.P.
- EXHIBIT P11. TRUE COPY OF THE ORDER OF THE SUB JUDGE, KASARAGOD IN E.P.NO.100/2013 IN O.S.115/1992.

RESPONDENT(S) ' EXHIBITS :

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

A. MUHAMED MUSTAQUE, J.

.....
O.P.(C) No. 1250 of 2015
.....

Dated this the 31st day of August, 2015

JUDGMENT

The petitioners have approached this Court with the following prayers :

- (i) To set aside Ext.P11 order in E.P.No.100/2013 in O.S.No.115/1992 of the Sub Judge, Kasaragod.
- (ii) To declare that the petitioners are not liable to pay interest for the 50% of the decree amount deposited by the petitioner as directed by this Hon'ble Court.
- (iii) Grant such other reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case including cost of the writ petition.

2. In appeal as against the money decree, the State was directed to deposit the decree amount along with interest and costs. The state deposited the amount. This Court ordered release of ½ of the amount, which was deposited. Thereafter the appeal was dismissed. The only issue now pertains to the future interest.

3. The State contended before the execution court that they are not liable to pay future interest as they have discharged the

entire liability under the decree by deposit. The execution court overruled the objection and ordered the State to deposit the balance amount by calculating the interest as shown in the execution petition. Since the amount was not paid, by an order of attachment, the vehicle belongs to the State has been attached and seized.

4.The learned Government Pleader submits that the State is not liable to pay any interest after the deposit made before the court below and therefore order passed by the court below is erroneous and illegal.

5.The learned counsel for the decree holder would submit that in terms of Order 41 Rule 5 of Code of Civil procedure the State was ordered only to furnish security by deposit of the amount before the court below and to release $\frac{1}{2}$ of the amount so deposited. Therefore it cannot be taken as a discharge of the liability of the State.

6.What is ordered by this Court is only to release $\frac{1}{2}$ of the amount, that was paid. Therefore, the remaining amount, the

petitioner is entitled for a future interest as per the decree. The deposit of the amount in compliance with the appellate court's direction cannot be treated as a discharge of the liability under the decree that is only a condition to furnish security for stay.

7. It would be instructive to refer to the judgment of the Supreme Court in P.S.L. Ramanathan Chettiar and others , Appellants v. O.R.M.P.R.M, Ramanathan Chettiar Respondent [(1968) SC 1047], where, at paragraphs 12 and 13, reads as follows:

(12) On principle, it appears to us that the facts of the judgment-debtor's depositing a sum in court to purchase peace by way of stay of execution of the decree on terms that the decree-holder can draw it out on furnishing security, does not pass title to the money to the decree-holder. He can if he likes take the money out in terms of the order; but so long as he does not do it, there is nothing to prevent the judgment-debtor from taking it out by furnishing other security, say, of immovable property, if the court allows him to do so and on his losing the appeal putting the decretal amount in court in terms of Order 21 Rule 1 C.P.C., in satisfaction of the decree.

(13) The real effect of deposit of money in court as was done in this case is to put the money beyond

the reach of the parties pending the disposal of the appeal. The decree-holder could only take it out on furnishing security which means that the payment was not in satisfaction of the decree and the security could be proceeded against by the judgment-debtor in case of his success in the appeal. Pending the determination of the same, it was beyond the reach of the judgment-debtor.

8. In view of the above, I do not find any infirmity with the order.

Accordingly, the original petition is dismissed. However, vehicle attached shall be released to the State forthwith and State is given three months' time from today to pay the balance amount under the decree.

It is made clear that, the only issue now pertains is with regard to the balance amount. This shall be paid after deducting the amount already released to the petitioner.

Sd/-
A. MUHAMED MUSTAQUE
JUDGE