

IN THE COURT OF THE SUBORDINATE JUDGE, OTTAPALAM

Present:- Smt.Vani K.M., Sub JudgeTuesday 12th day of October, 2021 (20th day of Aswina, 1943 S.E)**EXECUTION PETITION No.90/2017 IN OS.217/2013****Between:-****Petitioner / Plaintiff**

Sreekumr, aged 37 years, S/o.Kalathilthodi Veettil Kesavan, Koonathara Amsom, Panyoor Desom, Ottapalam Taluk.

And:-**Respondents / Defendants**

1. Suresh Babu, aged 44 years, S/o.Thekkepurakkal Kelu, Kothakurussi Amsom, Edakkod Pavukkonam Desom, Ottapalam Taluk.
2. Divya, aged 44 years, W/o. Thekkepurakkal Suresh Babu, Kothakurussi Amsom, Edakkod Pavukkonam Desom, Ottapalam Taluk.

This Petition coming on 1st day of October, 2021 for hearing before me in the presence of Sri.K.R.Santhoshkumar, Advocate for Petitioner and of Sri.K.V.Narayanan, Advocate for respondents, and have stood over to this day, the Court passed the following:-

ORDER

The mode of execution sought for, by the decree holder is for sale. The decree holder has scheduled 2 items of property in the draft sale proclamation. Item No.1 is having an extent of 1 acre 1 cents of property. Item No.2 consists of 3 properties which are having areas of 50 cents , 11 ½ cents and 16 ¼ cents. According to the decree holder, the market value of the item No.2 property is Rs.5,05,000/- and the market vale of item No.2 property is Rs.3,90,000/-. The decree holder has sought to sell both the properties for realising the decree debt. Judgment debtor in his objection to the Rule 66 notice contended that the market value shown is very meager. There is no necessity for sale of 4 items of property. Even in the agreement for sale, the

judgment debtor had agreed to purchase the property for Rs.10,000/-. The value of property has to be fixed as per the agreement.

2. When the judgment debtor contended that the valuation of the property shown is very less, the decree holder had taken out a commission. The commissioner filed report and sketch. They are marked as Ext.C1 and C1(a). In the commissioner's report, it is reported that the scheduled properties will fetch Rs.6,000/- per cent and there is no chance for obtaining any higher value for the properties as it is lying in a higher terrain and there is no direct access from the road to the properties. The judgment debtor filed objection to the report and sketch. He produced Ext.B1 letter issued by the Village Officer after assessing the value of the property. Ext.B1 was marked through the Village Officer, who issued the same. The village officer was examined as RW1. The commissioner in this case was examined as RW2.

3. As per Ext.B1, the value of the property was assessed on enquiry and on a comparison of the value shown in the document of nearby properties. The value was thus fixed as Rs.17,500/- per cent. It was brought out in cross-examination of RW1 that the commissioner had fixed the value of the property on the basis of the fair value which was available in the register kept in the village and it was suggested to RW1 that he was not authorised to issue Ext.B1 letter. In this case, there are 2 valuations before the Court. First one is made by the commissioner. The commissioner has assessed the value of the property on the basis of the fair value fixed by the Government. But it was brought out in examination that the fair value was fixed 20 years ago. It was also brought out that there has been an enhancement in the value of the property. But he added that the value of the property scheduled was not enhanced. When the value of the remaining properties are enhanced, why the commissioner deposed that the value of the schedule property alone is not enhanced casts a doubt upon the testimony of the commissioner. The learned counsel for the judgment debtor submitted that the fair value cannot be considered as the sole

criteria to fix the market value. The fair value is only for the purpose of levying stamp duty. In *Kochammu and Others v. Kumaran and Others* reported in 2017(4) KLJ 341 it was held that *fixation of fair value by the Government for the purpose of registration does not mean that it reflects the real market value of the property and that has been fixed by the Government for the purpose of collecting revenue as stamp duty and registration fee and nothing more.* So the valuation made by the commissioner on the basis of the fair value, cannot be considered as the market value of the property. Though the Village Officer has in Ext.B1 reported that the value of the property is Rs.17,500/- per cent, it was brought out in his examination that the document which was relied upon to fix the value is near 500 to 600 meters away from the property scheduled and they are residential plots. So the calculation shown in Ext.B1 as such cannot be accepted.

4. The commissioner has reported the value as Rs.6000/- and the Village Officer has reported the value as Rs. 17,500/-. So, considering the evidence of the witnesses and the objection of the respondent that, the market value has to be fixed at Rs. 10,000/- per cent, I find it just and proper that the contention of the respondent that the market value of the property as Rs.10,000/- as more probable. When the market value is Rs.10,000/- per cent, the sale of item No.1 alone is sufficient to satisfy the decree debt. The extent of property in item No.1 is 1 acre 1 cent. The amount shown in the execution petition as decree debt is Rs.9,06,370/-. Towards cost Rs.24,884/- is shown. So the sale of 1 acre 1 cent of property is sufficient to realise that amount. There is no necessity to sell item No.2 shown in the draft sale proclamation.

Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in the open Court this the 12th day of October, 2021.

Sd/-
SUB JUDGE

WITNESSES EXAMINED & EXHIBITS MARKED:- NIL.

PETITIONER'S WITNESS EXAMINED & EXHIBIT MARKED : NIL

RESPONDENTS' WITNESS EXAMINED :

RW1 - 24-03-21 - Village Officer Thrikkadiri – I Village.

RESPONDENTS' EXHIBIT MARKED :

B1 - 07-12-18 - Letter issued by Village Officer, Ananganadi Village Office.

COURT WITNESS EXAMINED :

CW1 - 10-12-19 - Advocate Commissioner Sri. V.C.Janardhanan.

COURT EXHIBIT MARKED :

C1 - 25-02-19 - Commission report filed by Adv. Commissioner V.C Janardhanan.

C1(a) - 25-02-19 - Plan and Commission report submitted by Adv. Commissioner V.C Janardhanan.

Sd/-
SUB JUDGE

/ True Copy /

