

SLP(C)No. 19167 OF 2000

ITEM No.27

Court No. 3

SECTION XIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No.19167/2000
(From the judgement and order dated 25/08/2000 in CRP 1702/00
of The HIGH COURT OF KERALA AT ERNAKULAM)

MATHAI JOSEPH

Petitioner (s)

VERSUS

ETTUMANOOR SERVICE CO-OP. BANK LTD. &ORS

Respondent (s)

(With prayer for interim relief and office report)

Date : 17/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s)

Mr. C.N. Sree Kumar, Adv.

For Respondent (s)

Mr. M.K.S. Menon, Adv.
Ms. B.Sunita Rao, Adv.

UPON hearing counsel the Court made the following
O R D E R

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Leave granted.
The appeal is disposed of in terms of the signed
order.

.SP1

Kalyani. (S.L. GOYAL) @@
AA
COURT MASTER@@
A AA

(Signed Order is placed on the file.)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6438 OF 2001@@
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(Arising out of S.L.P.(C) No. 19167 of 2000)

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Mathai Joseph Appellant

Versus

Ettumanoor Service Co-op. Bank Ltd. & Ors. Respondents

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Leave granted.

The appellant's father took a loan of Rs. 1000/- from respondent No. 1 on 20th August, 1970. Upon his failure to pay the same, the Bank instituted arbitration proceeding and got an award in its favour. In execution thereof, land between one acre and 37 cents was put to auction and the Bank had purchased the same.

After the sale, respondent No. 1 had instituted a suit for declaration that the land belongs to it and it was for the recovery of possession of the land and for mesne profits that the suit was filed. The suit was decreed by the trial court and upheld by the High Court. So far Rs. 5,000/- has been paid by the appellant to the respondent/decreed holder. The land in question had been sold in auction and purchased by respondent No. 1. The land is, however, still in the possession of the appellant herein. It is stated that the mortgage value of the land today is more than Rs. 10 lakhs.

In these proceedings, the appellant is willing to pay, in addition to Rs. 5,000/- which is stated to have ..2/-

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been paid, such an amount as the Court may direct and thus redeem the mortgage.

It is quite evident that this is a case of an unequal battle between David and Goliath. For a loan of Rs. 1000/- the outstanding stated to be due as of today notwithstanding the receipt of Rs.5,000/-, is stated to be Rs. 1,49,242/- which claim of the respondent is, to say the least, shocking and clearly untenable. We are not satisfied in the present case, where the sale of the immovable property which is today stated to be worth Rs. 10 lacs that the sale for a paltry sum of about Rs. 2,000/- in the year 1978 should have been accepted. The Bank itself being a decreed holder has purchased the property and appears to have taken unfair advantage of the circumstances in which the appellant was placed.

In exercise of our jurisdiction under Article 142, we are of the opinion that justice would be done by directing the appellant to pay within six weeks from today a sum of Rs. 25,000/- to respondent No. 1. On such payment being made, the sale in favour of respondent No. 1 of the land in question would stand set aside and the documents of title/mortgage would be handed back by respondent No. 1 to the appellant. The appeal is

disposed of in the aforesaid terms.

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.....J
(B.N. KIRPAL)

New Delhi,
September 17, 2001

.....J
(ASHOK BHAN)