

(2013) 07 KL CK 0028

In the High Court Of Kerala

Case No : E.A. No. 237 of 1998 in E.P. No. 340 of 1989 in O.S. No. 473 of 1988

Rajalekshmi Amma

APPELLANT

Vs

Basheer and Others

RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2014) 1 BC 395 : (2013) 4 ILR (Ker) 385 : (2013) 4 KLJ 754 : (2013) 4 KLT 443

Hon'ble Judges : Thottathil B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : R.S. Kalkura, for the Appellant; A. Ahzar, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Supported by an order of attachment before judgment obtained on 11-8-1992, the appellant put a money decree in execution, including by sale of the property under attachment. The contesting respondents filed a claim petition pleading that they are transferees of one who had bid the aforesaid item of property in a sale under the provisions of the Kerala Revenue Recovery Act, 1968, for short, "RR Act", which sale was confirmed under that Act on 23-12-1994. The proceedings under the RR Act was at the instance of the Kerala Financial Corporation (KFC), an institution governed by the State Financial Corporations Act, 1951, for short, "SFC Act", to which establishment, the provisions of the RR Act stood extended as per SRO No. 851 of 1979. The question is whether the attachment by the civil court, on 11-8-1992, will override the sale confirmed under the RR Act on 23-12-1994. The learned counsel for the appellant argued, firstly, that KFC having taken recourse to the RR Act, is deemed to have foregone its rights under the Transfer of Property Act, 1882, for short, "TP Act", to sell the mortgaged property. Secondly, it was argued that Section 60 of the RR Act, which makes a sale under that Act to be free of all encumbrances, does not apply to a sale at the instance of the KFC because it is not a sale on account of arrears of public revenue due on land. Learned counsel for the contesting respondents supported the impugned

order and its reasoning.

2. When a mortgage is created in terms of the provisions of the TP Act, it amounts to an encumbrance. An order of attachment before judgment creates no charge. There is nothing in the RR Act or in the SFC Act, which changes the jurisprudential content of a mortgage, in terms of the TP Act when the provisions of either of those legislations are invoked by the KFC. Equally, the quality of the mortgage created in favour of KFC does not, in any manner, get extinguished or reduced in terms of its legal character and statutory potency in terms of the TP Act, by the fact that alternate modes of recovery were resorted to by KFC, rather than by a suit in terms of Section 67 of the TP Act. The quality of the mortgage as an encumbrance does not get watered down to be subservient to by an order of attachment by the civil court under Code of Civil Procedure. That order of attachment does not override or deserves to be preferred over the rights of a mortgagee or the effect of the mortgage as an encumbrance.

For the aforesaid reasons, the existence of an attachment by the civil court from 11-8-1992 had no impact whatsoever on the sale under the RR Act, which stood confirmed on 23-12-1994, notwithstanding whether that sale is to be free of all encumbrances or not. Under such circumstances, we do not find any ground to interfere with the impugned order. This appeal fails.

In the result, this appeal is dismissed. No costs.