



2025:KER:54806

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 18TH DAY OF JULY 2025 / 27TH ASHADHA, 1947

MSA NO. 26 OF 2025

THE JUDGMENT AND DECREE DATED 21.11.2024 IN AS NO.75 OF 2022 OF I
ADDITIONAL DISTRICT COURT, ERNAKULAM ARISING OUT OF THE ORDER DATED
08.04.2022 IN IA NO.2/2021 IN IP NO.2/2015 OF IST ADDITIONAL SUB
COURT, ERNAKULAM

APPELLANTS/APPELLANTS IN AS/RESPONDENTS 3 & 4 IN IA

- 1 RAGESH RAMESH
AGED 42 YEARS
SON OF RAMESH BABU, PONEKKARA, AIMS P.O.,
PIN - 682041
- 2 RAMESH BABU
SON OF ARAVINDAKSHA MENON, KUZHIKKATTIL HOUSE, PONNURKODU,
PAZHAMATTOM, PIN - 683565

BY ADVS. SRI.T.RAMPRASAD UNNI
SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.SHEHIN S.
SMT.DEVIKA S.
SMT.RESHMA DAS P.

RESPONDENTS/RESPONDENTS IN AS/PETITIONER AND RESPONDENTS 1&2 IN IA

- 1 PUSHPA JOSE
THUNDIYIL HOUSE, PRABHU'S ROAD, PERUMPILLY,
NJARAKKAL P.O., PIN - 682505
- 2 STAR HOMES (HAVING REGISTERED OFFICE AT CHERUPARAMBATH
ROAD, KADAVANTHRA, COCHIN - 20), SOUTH STAR APARTMENTS,
OPPOSITE KSRTC BUS DEPOT, ERNAKULAM COLLEGE P.O.,
KAMMATTIPADAM (GANDHI NAGAR), KOCHI, ERNAKULAM DISTRICT.,
PIN - 682035



3 THE RECEIVER
DISTRICT COURT, ERNAKULAM, PIN - 682011

SMT.ASHA B. MATHEW, OFFICIAL RECEIVER

THIS MISC. SECOND APPEAL HAVING BEEN FINALLY HEARD ON
18.07.2025, ALONG WITH MSA.28/2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

FRIDAY, THE 18TH DAY OF JULY 2025 / 27TH ASHADHA, 1947

MSA NO. 28 OF 2025

THE JUDGMENT AND DECREE DATED 21.11.2024 IN AS NO.86 OF 2022 OF
I ADDITIONAL DISTRICT COURT, ERNAKULAM ARISING OUT OF THE ORDER
DATED 08.04.2022 IN IA NO.3/2021 IN IP NO.2/2015 OF IST
ADDITIONAL SUB COURT, ERNAKULAM

APPELLANTS/APPELLANTS IN AS/RESPONDENTS 4 & 5 IN IA

- 1 RAGESH RAMESH
AGED 42 YEARS
SON OF RAMESH BABU, PONEKKARA, AIMS P.O.,
PIN - 682041
- 2 RAMESH BABU
SON OF ARAVINDAKSHA MENON, KUZHIKKATTIL HOUSE,
PONNURKODU, PAZHAMATTOM, PIN - 683565

BY ADVS.SRI.T.RAMPRASAD UNNI
SRI.K.RAMAKUMAR (SR.)
SRI.S.M.PRASANTH
SRI.SHEHIN S.
SMT.DEVIKA S.
SMT.RESHMA DAS P.

RESPONDENTS/RESPONDENTS IN AS/PETITIONER AND RESPONDENTS 1 TO 3,
6 & 7 IN IA

- 1 THE RECEIVER
DISTRICT COURT, ERNAKULAM, PIN-682011
- 2 STAR HOMES (HAVING REGISTERED OFFICE)
STAR HOMES (HAVING REGISTERED OFFICE AT
CHERUPARAMBATH ROAD, KADAVANTHRA, COCHIN - 20), SOUTH
STAR APARTMENTS, OPPOSITE KSRTC BUS DEPOT, ERNAKULAM
COLLEGE P.O., KAMMATTIPADAM (GANDHI NAGAR), KOCHI
ERNAKULAM DISTRICT., PIN - 682035



- 3 AJAY V. GEORGE
 VILLA NO.4, STAR ENCLAVE, CHAMBOKADAVU ROAD,
 EDAPPALLY TOLL, EDAPPALLY P.O., COCHIN, PIN - 682024
- 4 VIJAYA VARGHESE
 W/O. AJAY V. GEORGE, VILLA NO. 4, STAR ENCLAVE,
 CHAMBOKADAVU ROAD, EDAPPALLY TOLL, EDAPPALLY P.O.,
 COCHIN., PIN - 682024
- 5 PUSHPA JOSE
 THUNDIYIL HOUSE, PRABHU'S ROAD, PERUMPILLY,
 NJARAKKAL P.O., PIN - 682505
- 6 STAR COUNTY ALOTTEES ASSOCIATION
 REPRESENTED BY ITS SECRETARY, THYPARAMBIL HOUSE,
 SYRIAN CHURCH ROAD, ALUVA P.O., ERNAKULAM DISTRICT,
 PIN - 683101

R6 BY ADV.SRI.JACOB MATHEW MANALIL
 SMT.PRIYA ELIZABETH BABU
 SRI.HRISHIKESH JAYASARMAN

THIS MISC. SECOND APPEAL HAVING BEEN FINALLY HEARD ON
18.07.2025, ALONG WITH MSA.26/2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



EASWARAN S., J.

M.S.A.No.26 of 2025
&
M.S.A.No.28 of 2025

Dated this the 18th day of July, 2025

JUDGMENT

These Miscellaneous Second Appeals raises common questions of law and hence considered and disposed of together by this common judgment.

2. The appellants are respondents 3 and 4 in an application under Section 52 r/w Sec.55 and 28 of the Kerala Insolvency Act, 1955. The brief facts necessary for the disposal of the appeals are as follows:

3. An insolvency petition came to be filed against the 2nd respondent before the Ist Additional Sub Court, Ernakulam. The Insolvency Petition was filed on 14.07.2015 and was admitted on 15.7.2015. On 16.12.2015, the trial court ordered symbolic possession of the property to the Official Receiver and on 02.11.2019, the 2nd respondent and its partners including respondents 2 and 3 in I.A.No.3/2021 were adjudged as



insolvents. Thus, the order of adjudication as insolvent relates back to the date of presentation of the insolvency petition. The appellants are the creditors of the insolvents who filed O.S.No. 125/2010 seeking for recovery of money against the 2nd respondent. It appears that the suit was decreed and E.P.No.125/2013 was filed. Similarly, O.S No.126/2010 was also filed, which was also decreed, resulted in Execution Petition 53/2014. The Executing Court namely the Sub Court, North Paravur in execution of the judgment and decree in O.S No.125/2010 and 126/2010, proclaimed an extent of 2.37 Ares of land belonging to the 2nd respondent and sold in execution of the decree and the appellants as decree holders purchased the property. The Official Receiver appointed by the Insolvency Court, proceeded to file an application as IA No.3/2021 to annul the sale certificate. Similarly, I.A 2/2021 was also filed by one of the creditors to cancel the sale certificate. Both these applications were considered together and the Sub Court found that in terms of the provisions contained under Section 28(1) r/w Sec.56, the sale certificate has no efficacy of law and accordingly directed the appellants to surrender the sale



certificate and cancel the same.

4. Aggrieved by the order of the Sub Court, the appellants preferred AS Nos.75/2022 and 86/2022 before the Ist Additional District Court, Ernakulam. By judgment dated 21.11.2024, both the appeals were dismissed. While admitting the appeals, this Court by order dated 02.06.2025 framed the following substantial questions of law.

"A. Whether resort to provisions contained in Sections 28, 52 and 56 of the Kerala Insolvency Act, 1955, which have no application, can be made before any court of law?

B. Whether a sale certificate issued by a competent court can be annulled by a court of co-equal or subordinate jurisdiction?

C. Whether the courts below can act on presumption without the support of evidence in regard to the conduct of the parties involved in the case?

D. Whether the courts below have even adverted to the substantial and important questions of law in adjudicating the case against the appellants?

E. Whether the appellants are not subjected to manifest injustice and prejudice on account of totally unsustainable proceedings?

F. Whether the rights under Article 300A of the



Constitution of India enjoyed by the appellants, have not been infringed?"

5. Heard Sri. K.Ramakumar, the learned Senior Counsel for the appellants assisted by Shehin S. and Smt.Asha.B.Mathew, the learned counsel appearing for the Official Receiver and Sri.Jacob Mathew Manalil, the learned counsel appearing for the 6th respondent in MSA No.28/2025.

6. Sri.K.Ramakumar, the learned Senior Counsel appearing for the appellants contended that the application by the Official Receiver is not one under Section 56. The application filed by the individual creditor could not have been entertained by the Sub Court without granting leave. In fact, no such leave was sought for by the creditor. It is further pointed out that in terms of Sections 52 and 55 of the Kerala Insolvency Act, 1955, an enquiry as regards the bona fides of the subsequent purchaser has to be entered by the court below. Having not undertaken the aforesaid exercise, the entire finding of the courts below is wrong and liable to be interfered with.

7. Per contra, Smt. Asha B.Mathew, the learned counsel appearing for the Official Receiver, pointed out that in the



present case, though the application is under Sections 28, 52 and 55 of the Kerala Insolvency Act, 1955 the prayer for annulment of the sale certificate has been sought for. Mere non-quoting of the provision under the Kerala Insolvency Act, 1955, will not enable the appellants to contend that the application is not maintainable. It is further pointed out that by Report No.6 filed in I.P. No.2/2015, the Official Receiver had specifically brought to the notice of the Ist Additional Sub Court, Ernakulam, that the appellants herein were aware of the proceedings of the Insolvency Court and that the Board fixed by the Official Receiver after taking symbolic possession of the property has since been destroyed by them. Therefore, it is contended that there is no bona fides on the part of the appellants in contending that their sale certificate has to be held valid.

8. Sri.Jacob Mathew Manalil, the learned counsel appearing for the 6th respondent in MSA No.28/2025 also supported the argument of the learned counsel for the Official Receiver and would submit that what was required before the Insolvency Court was to trigger the facts for exercise of the



power under Section 56 of the Kerala Insolvency Act, 1955. Although no separate application for leave was sought along with I.A No.2/2021, as a creditor, it is his duty to bring it to the notice of the Insolvency Court that ignoring the orders passed by the court, the execution of a decree obtained against the property of the insolvent, is impermissible under law.

9. I have considered the rival submissions raised across the Bar and have perused the orders passed by the courts below and also the records.

10. The question to be considered by this Court is whether the leave of the Court is necessary for the exercise of the power under Section 56 of the Kerala Insolvency Act, 1955. A perusal of the application filed before the Sub Court by the Official Receiver would show that, the Official Receiver has pleaded for cancellation and annulment of the sale certificate. The power of the court to annul the sale certificate issued contrary to the provisions of Section 28 of the Kerala Insolvency Act, 1955, cannot be disputed by the appellants. The said power is vested under Section 56 of the Act. Section 56 of the Kerala Insolvency Act, 1955, reads as under.



"56. By whom petitions for annulment may be made.-

A petition for the annulment of any transfer under Section 54 or of any transfer, payment, obligation or judicial proceeding under Section 55 may be made by the receiver or, with the leave of the Court, by any creditor who has proved his debt and who satisfies the Court that the receiver has been requested and has refused to make such petition."

11. The leave to file an application under Section 56 of the Kerala Insolvency Act, 1955 would arise only if such an application is preferred by a party other than the Official Receiver. In the present case, the Official Receiver has clearly sought for a prayer for annulment of the certificate. Merely because the provision under Section 56 has not been incorporated while drafting I.A No.3/2021 and that by itself cannot be considered as an infirmity in maintaining the application. Therefore, this Court is not persuaded to accept the suggestion made by the learned Senior Counsel, Sri.K.Ramakumar, that in the absence of any application under Section 56 of the Kerala Insolvency Act, 1955, I.A No.3/2021 was not maintainable . Accordingly, the point is found against



the appellants.

12. Next, it is contended that the courts below had not considered the impact of Sections 52 and 55 of the Kerala Insolvency Act, 1955. Sections 52 and 55 of the Kerala Insolvency Act, 1955, reads as under:

"52. Restriction of rights of creditor under execution.-(1) Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the receiver except in respect of assets realised in the course of the execution by sale or otherwise before the date of the admission of the petition.

(2). Nothing in this section shall affect the right of a secured creditor in respect of the property against which the decree is executed.

(3). A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the receiver."

53. xxxxx

54. xxxxx

55. Avoidance of preference in certain cases.- (1) Every transfer of property, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become



due from his own money in favour of any creditor, with a view of giving that creditor a preference over the other creditors, shall, if such person is adjudged insolvent on a petition presented within three months after the date thereof, be deemed fraudulent and void as against the receiver and shall be annulled by the Court.

(2) This section shall not affect the rights of any person who in good faith and for valuable consideration has acquired a title through or under a creditor of the insolvent.”

At the first blush, it may appear, that the argument raised by the learned Senior Counsel Sri.K.Ramakumar, is appealing. But on a close exploration of the aforesaid argument in the facts in the present case, will lead to a different conclusion altogether. True, a subsequent purchaser who has purchased the property with bona fide intention, could be protected even against an Official Receiver. But, the pertinent question is whether in the present case, any bona fides are available in favour of the appellants. It is pertinent to mention that the execution of the decree in O.S Nos.125 and 126 of 2010 was during the pendency of the insolvency proceedings and that too after when the Official



Receiver was directed to assume symbolic possession of the property of the insolvent. It is indisputable that once an order is passed in the insolvency petition, it relates back to the date of presentation of the same. Therefore, the present case, the insolvency application having been preferred on 15.7.2015, as soon as the final order has been passed, the order takes effect from 15.7.2015.

13. As required by this Court, the appellants have provided the details of the decree passed in O.S.Nos. 125 and 126 of 2010. Pertinent to mention that, the decree is one by consent obtained in the Lok Adalath as early as on 12.02.2011. Even though, at the time when the decree was passed, there was no insolvency petition pending, that by itself will not enable the appellants to succeed. Admittedly, the sale certificates were issued on 30.05.2016. By that time, the Official Receiver was already appointed and was directed by the Court below to assume symbolic possession of the property. As soon as the Official Receiver took symbolic possession of the property, the person sought to be declared as insolvent was divested of right title and interest over the property. Therefore, the execution of



the decree in O.S.No. 125/2010 and 126/2010 is contrary to the provisions of the Kerala Insolvency Act, 1955.

14. Yet another contention raised by the learned Senior Counsel Sri.K.Ramakumar, is that the appellants are bona fide purchasers of the property in the execution of the decree. The Senior Counsel submitted that the question as to whether the appellants are bona fide purchasers is not decided by the courts below and hence the matter requires a remand. However, this Court cannot agree with the aforesaid proposition. Report No.6 filed by the Official Receiver specifically shows that the Official Receiver had intimated the Insolvency Court that the appellants had executed the decree against the property, which is declared to be in the custody of the Official Receiver. The fact that at the time of delivering the property in execution of the decree in O.S No.125 and 126 of 2010, the Amin who visited the property was aware of the existence of the Board affixed by the Official Receiver is not disputed. If that be so, the appellants should have immediately intimated to the Insolvency Court regarding their claim and also the execution of the judgment and decree in O.S No.125/2010 and 126 of 2010.



15. It is brought to the notice of this Court by Sri.Jacob Mathew Manalil, the learned counsel appearing for the 6th respondent in MSA No.28/2025 that by getting an extent of 2.37 Ares of property executed, the appellants have virtually blocked the entries to the property which is in the custody of the Official Receiver. The Official Receiver is in the process of selling the undivided share of the land together with the flats situated in the property. There are around 217 creditors whose interests are affected because of the issuance of the sale certificate by the Sub Court, North Paravur. It is under these circumstances that the courts below have taken a view that the appellants cannot be construed as bona fide purchasers of the property.

16. This Court finds that there is considerable force in the submissions of Sri. Jacob Mathew Manalil, the learned counsel appearing for the 6th respondent in MSA No.28/2025 as well as Smt.Asha B Mathew, learned counsel appearing for the Official Receiver. This Court cannot remain oblivious of the fact that permitting the appellants to sustain the sale certificate would certainly affect the prospects of the creditors who are standing



in the queue who had a claim adjudicated by Official Receiver. In fact the appellant should have also moved the Official Receiver with an appropriate claim and is only entitled to a pro-rata distribution of the proceeds. In the absence of any concrete evidence to show that the appellant is a secured creditor, the appellant cannot claim primacy in execution of the judgment and decree in O.S.No.125 and 126 of 2010.

Viewed in the above perspective, this Court cannot find fault with the orders passed by the courts below. Accordingly, answering the questions of law raised in the appeal against the appellants, this Court finds that the courts below are perfectly justified in calling for the sale certificates and annulling the same. The orders passed by the Additional Sub Court-I, Ernakulam, as confirmed by the Ist Additional District Court, Ernakulam does not suffer from any jurisdictional infirmity or procedural irregularity. Accordingly, these appeals fail and the same are dismissed.

Sd/-
EASWARAN S.
JUDGE