

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

WEDNESDAY, THE 25TH DAY OF MARCH 2015/4TH CHAITHRA, 1937

OP(C).No. 503 of 2015 (O)

(OS 50/2013 of SUB COURT, CHENGANNUR)

PETITIONER:

R.SYAM, AGED 27 YEARS
S/O.RADHAKRISHNAN NAIR, PATTATTIL MEKATTIL HOUSE,
MANKANKUZHI P O, (VELLIYAR VILLAGE), MAVELIKKARA TALUK,
ALAPPUZHA.

BY ADVS.SRI.T.M.ABDUL LATHEEF
SRI.A.ABDUL LATHEEF

RESPONDENTS:

1. THE MANAGER, INDIABULLS HOUSING FINANCE LTD.,
M-62 & 63, FIRST FLOOR, CONNAUGHT PALACE
NEW DELHI-110 001.
2. AUTHORIZED OFFICER
INDIABULLS HOUSING FINANCE LTD, 448-451
UDYOG VIHAR PHASE-V, GURGAON - 122 001.
3. SAJITH KUMAR
SREELAKAM, GANDHINAGR, KOLLAM-691 002.
4. K.M JAYALAKSHMI,
W/O.SAJITH KUMAR, SREELAKAM, GANDHINAGAR,
KOLLAM-691 002.

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
25-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP(C).No. 503 of 2015 (O)

APPENDIX

PETITIONER'S EXHIBITS :

- P1:- TRUE COPY OF THE SALE DEED NO.2428/2011 DTD 8/12/2011.
- P2:- TRUE COPY OF THE PLAINT IN OS NO.50/2013 FILED BY THE PETITIONER BEFORE THE SUB COURT, CHENGANNUR.
- P3:- TRUE COPY OF THE NOTICE DTD 26/11/2014 OF THE 2ND RESPONDENT.
- P4:- TRUE COPY OF LETTER DTD 22/1/2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- P5:- TRUE COPY OF THE IMPEADING PETITION DTD 24/1/2015 FILED BY THE PETITIONER BEFORE THE SUB COURT, CHENGANNUR IN OS NO. 50 OF 2013.
- P6:- TRUE COPY OF THE PETITION DTD 24/1/2015 FILED BY THE PETITIONER BEFORE THE SUB COURT, CHENGANNUR IN OS NO. 50/2013.
- P7:- TRUE COPY OF THE POSSESSION NOTICE DTD.13/2/2015 ISSUED BY THE 2ND RESPONDENT.

RESPONDENT'S EXHIBITS: NIL.

// True Copy //

P.A. to Judge.

smp

P.BHAVADASAN, J.

Original Petition (Civil) No.503 OF 2015

Dated this the 25th day of March, 2015.

J U D G M E N T

Shorn of unnecessary details, the facts absolutely necessary for the disposal of the original petition are as follows:

2. The petitioner claims to be the owner and in possession of 13.50 Ares of property with a residential building therein. It is alleged that there was a financial transaction between the petitioner and the 3rd respondent and the 3rd respondent obtained several signed papers from the petitioner and also created a document providing for security for the loan amount of Rs.26,75,000/-. The petitioner claims that out of the said amount, Rs.19,77,500/- has been returned by him on different occasions. Later on it is alleged that the 3rd respondent created a document in the name of 4th respondent who is none other than his wife styled as a sale deed whereby the property involved in the proceedings was sold in favour of the 4th respondent. Coming to know about the fraudulent act committed by respondents 3

and 4, petitioner claims to have instituted O.S.No.50/2013 before Sub Court, Chengannur. The petitioner later came to know that taking aid of the so called document alleged to have been executed in favour of the 4th respondent, respondents 3 and 4 approached the respondents 1 and 2 and availed of a loan providing the property as security for the said transaction. It is alleged that the petitioner never intended to sell the property but he only intended to provide his property as security and that security was to be released once the amount due to the 3rd respondent was paid off by the petitioner.

3. In the meanwhile, the petitioner received a notice from respondents 1 and 2 indicating that proceedings under the SARFAESI Act have been initiated against the property. The petitioner, on getting notice, sought to have the respondents 1 and 2 impleaded in the suit.

4. The complaint before this Court is that the impleading petition filed by the petitioner before the court below has not been disposed of so far.

5. It is not necessary for this Court to consider whether the

suit is maintainable or not since the limited prayer in this original petition is for a direction to the court below to dispose of Ext.P5 impleading petition at the earliest.

Whatever may be the nature of right the petitioner may enjoy with respect to the property and whatever may be the right of respondents 3 and 4, since the prayer sought is limited, this original petition is disposed of directing Sub Court, Chengannur to take up Ext.P5 impleading petition said to have been filed by the petitioner and dispose of the same on merits in accordance with law, as expeditiously as possible, at any rate, before summer vacation begins. The question as to whether the petitioner has a right to file civil suit is a matter to be decided by the appropriate forum in appropriate proceedings.

Sd/-

P.BHAVADASAN
JUDGE

smp