

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

TUESDAY, THE 3RD DAY OF MARCH 2015/12TH PHALGUNA, 1936

WP(C).No. 2735 of 2010 (N)

PETITIONER(S):

**U.N.RADHA, W/O.JANARDHANAN ADIYODI,
R/AT PARAKKAT HOUSE, PUTHIYANGADI P.O., KOZHIKODE.
REPRESENTED BY POWER OF ATTORNEY HOLDER
P.M.RAGHAVAN, S/O.PARANGODAN, P.K.HOUSE,
PANTHEERAMKAVU P.O., KOZHIKODE-19.**

**BY ADVS.SRI.T.SETHUMADHAVAN
SRI.PUSHPARAJAN KODOTH
SRI.K.JAYESH MOHANKUMAR**

RESPONDENT(S):

- 1. SUB REGISTRAR, CHEVAYOOR.**
- 2. GENERAL MANAGER,
CALICUT CO-OPERATIVE URBAN BANK LTD. NO.1538,
KOZHIKODE.**
- 3. C.K.NISHAJ, S/O.C.K.MAMMED,
C.K.NIVAS, P.O. NALLALAM, KOZHIKODE.**

**R1 BY SENIOR GOVERNMENT PLEADER SRI.SOJAN JAMES
R2 BY ADV. SRI.DEVAPRASANTH.P.J.
R3 BY ADVS. SRI.P.SREEKUMAR
SRI.T.S.SARATH
SMT.P.M.MAZNA MANSOOR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03-03-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS:

EXT.P1: TRUE COPY OF THE DOCUMENT NO.2906/2002 OF THE S.R.O., CHEVAYOOR DATED 12.9.2002 PURCHASED BY PETITIONER.

EXT.P2: TRUE COPY OF THE SETTLEMENT DEED NO.2623/1999 OF SRO, CHEVAYOOR DATED 21.8.1999.

EXT.P3: TRUE COPY OF THE OWNERSHIP CERTIFICATE IN RESPECT OF SHOP ROOM NOS.OP 4/625-A, 625-B, 625-C, 625-D, 625-E AND 625-F IN THE NAME OF PETITIONER DTD.4.8.2006 ISSUED BY THE OLAVANNA GRAMA PANCHAYATH.

EXT.P4: TRUE COPY OF SALE NOTICE ISSUED BY THE AUTHORIZED OFFICER OF THE 2ND RESPONDENT BANK DTD.26.8.2005.

EXT.P5: TRUE COPY OF SALE NOTICE DTD.27.4.2005 PUBLISHED BY THE 2ND RESPONDENT BANK U/S 13/(2) OF THE SARFAESI ACT IN THE MATHRUBHUMI DAILY DATED 13.5.2005.

EXT.P6: TRUE COPY OF THE SALE CERTIFICATE ISSUED BY THE AUTHORIZED OFFICER OF THE 2ND RESPONDENT BANK DTD.15.3.2006.

EXT.P7: TRUE COPY OF THE SALE DEED NO.2081/2009 DATED 19.6.2009 EXECUTED BY THE 2ND RESPONDENT IN FAVOUR OF 3RD RESPONDENT.

EXT.P8: TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN WP(C) NO.7766/2009 DATED 20.3.2009.

EXT.P9: TRUE COPY OF THE APPLICATION SUBMITTED BY THE POWER OF ATTORNEY HOLDER OF THE PETITIONER BEFORE THE 1ST RESPONDENT ON 29.10.2009.

EXT.P10: TRUE COPY OF THE POSTAL RECEIPT FOR SENDING EXT.P10.

EXT.P11: TRUE COPY OF COMMUNICATION RECEIVED FROM THE SUPERINTENDENT OF POST OFFICE, CALICUT DIVISION DTD.8.1.2009.

EXT.P12(a): PHOTOGRAPH SHOWING THE LOCATION OF THE BUILDING.

EXT.P12(b): PHOTOGRAPH SHOWING THE LOCATION OF THE BUILDING.

RESPONDENT(S)' EXHIBITS:

NIL

//TRUE COPY//

P.S.TO JUDGE

C.K. ABDUL REHIM, J.

W.P.(C)No.2735 of 2010

Dated this the 3rd day of March, 2015

JUDGMENT

The petitioner got assigned with 11½ cents of land comprised in RS No.148/14 A and 170/7 of Olavanna Village by virtue of Ext.P1 sale deed executed by her son, Sri.Sajith. The son of the petitioner obtained the above said property along with certain other properties by virtue of Ext.P2 settlement deed executed in the year 1999. According to the petitioner, Sri.Sajith had constructed a single shop room building in the property derived by virtue of Ext.P2 settlement deed, and thereafter a portion of the property was transferred to the petitioner as stated above, in the year 2002. According to the petitioner, she had constructed a building in the 11½ cents of the property, containing six shop rooms. Ext.P3 is the ownership certificate issued by the Grama Panchayat concerned, certifying that the petitioner is the owner of the six shop rooms. The Petitioner's son, Sri.Sajith had

mortgaged the property upon which he had derived title through Ext.P2, in favour of the 2nd respondent Bank, in order to secure a loan availed by him. It was prior to execution of Ext.P1 sale deed in favour of the petitioner. Consequent to default committed by Sri.Sajith in repaying the loan, the 2nd respondent had initiated steps under the Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (SARFAESI Act). Based on Ext.P4 sale proclamation, the mortgaged property was sold to the 3rd respondent on 17/12/2005. Ext.P6 is the Sale Certificate issued by the Authorised Officer under the SARFAESI Act, consequent to confirmation of the sale in favour of the 3rd respondent. Based on Ext.P6 the 2nd respondent Bank had executed Ext.P7 Sale Deed in favour of the 3rd respondent, which was registered before the 1st respondent as Document No.2081/2009 of Sub Registrar Office, Chevayoor. The petitioner had submitted Ext.P9 request before the 1st respondent to initiate action against the Authorised Officer of the 2nd respondent Bank for executing Ext.P7

document, alleging that, by a fraudulent act the said Officer had also included the Building numbers of the six shop rooms owned by the petitioner, in the schedule of Ext.P7 Sale Deed. Contention of the petitioner is that, the building in question, which was allegedly constructed by the petitioner, was not included in any of the proceedings initiated under the SARFAESI Act. Even the Sale Proclamation or the Sale Certificate does not contain any description of the building in its schedule of the properties. Therefore it is alleged that, fraud and misrepresentation has been committed in preparing Ext.P7 Document and in getting the same registered before the 1st respondent, which invites prosecution to be initiated. Exts.P10 and P11 documents are produced to show that Ext.P9 representation was received by the 1st respondent. In the present writ petition the petitioner is alleging inaction on the part of the 1st respondent in not initiating any steps based on Ext.P9 representation. Therefore the petitioner is seeking declaration from this court to the effect that Ext.P7 document is vitiated by

fraud and collusion between respondents 2 and 3. Inter alia, the petitioner seeks direction to the 1st respondent to consider Ext.P9 and to take necessary action against respondents 2 and 3.

2. Heard; senior counsel appearing on behalf of the petitioner, counsel appearing for the 3rd respondent and the Government Pleader appearing for the 1st respondent. Admittedly, Ext.P1 Sale Deed was executed at a time when a valid mortgage was existing on the property, in favour of the 2nd respondent Bank. It is evident that the Deed of transfer of the property was executed by suppressing existence of the mortgage. Under such circumstances, this court cannot hold that the petitioner had derived valid title over the property by virtue of Ext.P1 Sale Deed. Contention of the petitioner is that, it stands established that the petitioner had constructed a shop building and that she is the owner of the building in question. In support of such a contention the petitioner relies on the Ownership Certificate produced as Ext.P3. On that basis it is claimed that the petitioner is entitled

for demolition and removal of the building in question or to get compensation with respect to the building, either from the 2nd respondent Bank or from the 3rd respondent. In support of the above contention it is pointed out that, ownership over the building, without ownership of the property, can be established under law since the 'solo solo credit' principle is not applicable as far as Indian law is concerned. Learned senior counsel had placed reliance in this regard on a decision of this court in **Mammunhi Alias Mahammad Beery v. Kunhibi [1960 KHC 326]**.

3. But this court is of the considered opinion that a declaration in the nature of ownership over the building cannot be sought for in a writ petition filed under Article 226 of the Constitution of India. If the petitioner has got any claim with respect to ownership over the building, she has to establish the same through appropriate forum under the common law, by adducing sufficient evidence before such forum. Hence the relief sought to the extent of declaration with respect to ownership of the building cannot be granted in this writ petition.

4. With respect to the alleged inaction on the part of the 1st respondent in initiating steps based on Ext.P9 representation, learned Senior counsel appearing for the petitioner contended that, the 1st respondent is duty bound to take such action based on Sections 81, 82 and 83 of the Registration Act, 1908. But on a perusal of the above said provisions, this court is not at all convinced that the 1st respondent is bound to initiate any steps of prosecution on the basis that the executant of Ext.P7 document had included description of the building in the schedule of the Deed, without there being established about his title and ownership over the building. Such a dispute, with respect to the absolute title or ownership of the property conveyed through a Document, is not a matter coming within the ambit or scope of Section 81 to 83 of the Act, is the considered opinion.

Under the above mentioned circumstances, none of the reliefs sought for in this writ petition deserve merit and cannot be allowed. However, it is made clear that the petitioner will be at liberty to seek appropriate

remedy under the common law to establish her rights or to seek compensation if any, for which she is eligible under law. Without prejudice to her rights to exercise such rights if any, this writ petition is hereby dismissed.

Sd/- **C.K. ABDUL REHIM**
JUDGE

MJL