IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY,THE 10TH DAY OF AUGUST 2015/19TH SRAVANA,1937

WP(C).No. 5506 of 2015 (K)

PETITIONERS :-

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1. LAKSHMI, W/O NARAYANAN,
   CHOORAVELIL, RAMAPURAM BAZAR P.O.,
   VELLIYAPPALLY, RAMAPURAM-686578.

2. MADHUSUDHANAM, S/O NARAYANAN,
   CHOORAVELIL, RAMAPURAM BAZAR P.O.,
   VALLIYAPPALLY, RAMAPURAM-686578.

BY ADV.SRI.V.S.AFSAL KHAN

RESPONDENT : -

THE AUTHORIZED OFFICER,
PALA URBAN CO-OPERATIVE BANK LTD 1850,
HEAD OFFICE PALAI, KOTTAYAM-686575.

BY ADV.SRI.P.C.HARIDAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 5506 of 2015 (K)

APPENDIX

PETITIONERS' EXHIBITS : -

EXHIBIT P1 : TRUE COPY OF THE TAX RECEIPT DATED 2.11.2011.

EXHIBTI P2 : TRUE COPY OF THE DEATH CERTIFICATE 21.3.14.

EXHIBIT P3 : TRUE COPY OF THE DISCHARGE CERTIFICATE ISSUED BY SREE CHITRA INSTITUTE FOR MEDICAL SCIENCE AND TECHNOLOGY TRIVANDRUM.

EXHIBIT P4 : TRUE COPY OF THE RATION CARD NO.1527009634 DATED 22.1.2010.

EXHIBIT P5 : TRUE COPY OF THE ADHAR CARD 15.12.12.

EXHIBIT P6 : TRUE COPY OF THE ADVDERTISEMENT IN MANGALAM DAILY NEWS PAPER DATED 6.3.2011.

EXHIBIT P7 : TRUE COPY OF THE REPRESENTATION DATED 14.3.2011 FILED BY THE PETITIONER.

EXHIBIT P8 : TRUE COPY OF THE ADVERTISEMENT IN MANGALAM DAILY NEWS PAPER DATED 3.2.2015.

EXHIBIT P9 : TRUE COPY OF THE REPRESENTATION DATED 6.2.2015 FILED BY THE PETITIONER.

EXHIBIT P10 : COPY OF THE REPRESENTATION DATED 20.07.2015 FILED BY THE PETITIONER.

EXHIBIT P10A : COPY OF TRANSLATION OF EXHIBIT P10 REPRESENTATION DATED 20.07.2015.

RESPONDENT'S EXHIBITS :

EXHIBIT R1 : COPY OF THE SALE CERTIFICATE.

EXHIBIT R2 : COPY OF THE LAND TAX RECEIPT.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 5506 of 2015

Dated this the 10th day of August, 2015

JUDGMENT

The facts as pleaded by the petitioners are that the second petitioner's father borrowed an amount of Rs.75,000/- way back in 1998 from the respondent Bank by mortgaging his residential property. Later, on 18.03.2008, the husband of the first petitioner and father of the second petitioner died without clearing the loan. For the realization of the outstanding loan amount, the respondent Bank had desired to bring the mortgaged property for sale, and accordingly issued Exhibit P8 sale notice. Aggrieved, the petitioners have approached this Court.

2. When the learned counsel for the petitioners has made his submissions in tune with the averments made in the writ petition, the learned counsel for the respondent Bank, which has already filed its counter affidavit, has submitted that the property, in fact, was brought for sale on

04.10.2002, and the sale was confirmed on 19.02.2003 in favour of the very respondent Bank, the decree holder, since there were no other bidders.

3. Drawing my attention to Exhibit R1 sale certificate, the learned counsel for the respondent Bank would contend that Exhibit P8 is the present notice to liquidate bank's own property by way of public auction, so that it could utilize the funds for a better purpose. In other words, it is the contention of the learned counsel for the respondent Bank that the petitioners are no longer the owners of the property and that they cannot have any objection concerning the respondent Bank's property being brought for sale. The learned counsel has also submitted that the sale effected in 2002 and confirmed in 2003 attained finality, as it has not been questioned.

4. In reply, the learned counsel for the petitioners has drawn my attention to Exhibit P10 representation said to have been submitted by the petitioners before the respondent Bank for re-conveyance of the property. The learned counsel for the petitioners has also submitted that on 20.02.2015 this Court issued an interim order directing

the petitioners to pay Rs.2,00,000/- as a pre-condition to grant stay which they have complied with. He has further submitted that the petitioners are willing to pay Rs.2,00,000/- more, so that the respondent Bank could consider the petitioners Exhibit P10 representation.

5. The learned counsel for the petitioners has also submitted that when the property was originally brought for sale way back in 2002, the value of the property had not been fixed properly, and that the entire property had been brought for sale, instead of a portion of it. According to him, since the very sale was vitiated, the petitioners could sustain their claim for what is said to be re-conveyance of the property, as has been requested in Exhibit P10.

6. To a specific query from the Court whether the petitioners have pleaded in the writ petition about the sale of the property in 2002 and its consequent delivery to the respondent Bank in 2003, the learned counsel for the petitioners is candid enough to admit that no such pleadings are found in the writ petition. There is also no whisper about Exhibit P10 representation in the writ petition. The fact, however, remains that the petitioners seek a re-conveyance

of the property from the respondent Bank, thereby, in so many words, admitting the title of the respondent Bank.

7. It does not, in my view, require much cogitation to hold that the sale effected and got confirmed way back in 2002 in favour of the respondent Bank has attained finality. In the present writ petition, no challenge has been laid against the said sale. Now, through Exhibit P8, the respondent Bank desires to sell its own property. Indeed, on 20.02.2015, this Court did give an interim direction whereby the petitioners paid Rs.2,00,000/. It is very evident that this Court *prima facie*, owing to the paucity of pleadings, may have been under the impression that Exhibit P8 is the sale notice in the first instance, and that the property still belonged to the petitioners, but that is not the case.

In the above facts and circumstances, I do not see any merit in the writ petition; accordingly, it is dismissed. It is, however left open for the respondent Bank to consider petitioners Exhibit P10 representation in accordance with law, after affording an opportunity of hearing to the second petitioner, and pass appropriate orders thereon as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment. It is abundantly made clear that a direction to the respondent Bank to consider the petitioners Exhibit P10 representation does not amount to any positive direction, much less an expression on the part of this Court on the merits of the matter to be considered by the respondent Bank.

DAMA SESHADRI NAIDU
JUDGE

DMR/-