

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 8TH DAY OF JUNE 2015/18TH JYAISHTA, 1937

WP(C).No. 5515 of 2015 (L)

PETITIONER(S) :

P.M.NAVAN, AGED 38 YEARS,
S/O.LATE K.KARUNAKARAN, SALESMAN,
RESIDING AT KORAMBETH HOUSE, MACHERI P.O., MOWANCHERRY,
CHELORA AMSOM, MACHERI DESOM, KANNUR TALUK,
KANNUR- 670 613.

BY ADVS.SRI.A.BALAGOPALAN
SRI.A.RAJAGOPALAN
SRI.M.N.MANMADAN
SRI.M.S.IMTHIYAZ AHAMMED

RESPONDENT(S) :

1. UNION BANK OF INDIA, REPRESENTED BY ITS AUTHORISED OFFICER,
NEAR SANTHOSH HOSPITAL, NEW BUS STAND, THALASSERY- 670 001.
2. P.LEELA, W.O.LATE K.KARUNAKARAN, AGED 68 YEARS,
RESIDING AT KORAMBETH HOUSE, MACHERI P.O., MOWANCHERRY,
CHELORA AMSOM, MACHERI DESOM, KANNUR TALUK, KANNUR- 670 613.
3. ROJA, AGED 47 YEARS,
HOUSEWIFE, D/O.LATE K.KARUNAKARAN, MENTALLY ILL,
REPRESENTED BY MOTHER AND GUARDIAN, P.LEELA,
AGED 68 YEARS, W/O.LATE K.KARUNAKARAN,
RESIDING AT KORAMBETH HOUSE,MACHERI P.O.,
MOWANCHERRY, CHELORA AMSOM, MACHERI DESOM,
KANNUR TALUK, KANNUR- 670 613.
4. REEJA, AGED 44 YEARS,
D/O.LATE K.KARUNAKARAN, RESIDING AT KORAMBETH HOUSE,
MACHERI P.O., MOWANCHERRY, CHELORA AMSOM,
MACHERI DESOM, KANNUR TALUK, KANNUR- 670 613.
5. SHEEJA, AGED 34 YEARS,
HOUSE WIFE, D/O.LATE K.KARUNAKARAN,
RESIDING AT KORAMBETH HOUSE,
MACHERI P.O., MOWANCHERRY, CHELORA AMSOM,
MACHERI DESOM, KANNUR TALUK, KANNUR- 670 613.

R1 BY ADV. SRI.A.S.P.KURUP, S.C, U.B.I

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08-06-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: TRUE PHOTOSTAT COPY OF THE 1ST PAGE OF THE SSLC BOOK OF THE PETITIONER.

EXHIBIT P2: TRUE PHOTOCOPY OF THE IDENTITY CARD OF THE PETITIONER, ISSUED BY THE ELECTION COMMISSION OF INDIA.

EXHIBIT P3: CERTIFIED COPY OF THE ORDER DATED 03/09/2014 PASSED BY THE CHIEF JUDICIAL MAGISTRATE'S COURT, THALASSERY IN C.M.P NO.501/2014.

EXHIBIT P4: TRUE PHOTOSTAT COPY OF FAMILY MEMBERSHIP CERTIFICATE NO. 7063933 DATED 10/07/2014 ISSUED BY THE VILLAGE OFFICER, CHELORA VILLAGE.

RESPONDENT(S)' EXHIBITS

NIL

//TRUE COPY//

P.A.TO JUDGE

Msd

A.MUHAMED MUSTAQUE, J.

W.P.(C) No.5515 of 2015

Dated this the 8th day of June, 2015

J U D G M E N T

The petitioner has approached this Court challenging the 'SARFAESI' proceedings initiated by the 1st respondent pursuant to Ext.P3 order. He alleges that, he has a share in the property comprised in Resurvey No.8/1 of Chelora Amsom, Machery Desom, against which the Bank proceeded with steps.

2. According to the petitioner, the property originally belongs to his father and he has 1/6 share of ownership right over the same. It is submitted that, he was not a party to the loan agreement with the Bank and he has already moved the Civil Court for partition. It is also submitted that, the Bank has no right to proceed against the property.

3. Essentially, the Bank can claim only the right of the mortgagor. Whatever right Bank obtains, that can be only the right of persons who have mortgaged the property. The petitioner is not a party to the agreement. Therefore, the petitioner's right cannot be obtained by the Bank. Whether the petitioner is entitled to retain possession of the property or not, cannot be decided by this Court. The right claimed by the petitioner is a civil right available to him under ordinary civil law. Under Article 226 of the Constitution, the Bank's action can only be interfered, if there is a statutory breach.

Therefore leaving open the petitioner's remedy against dispossession before the appropriate Civil Court, this writ petition is disposed of. Since the Bank has not taken possession so far, Bank shall not take the same for a period of one month.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE.

AV