

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 20TH DAY OF JANUARY 2015/30TH POUSHA, 1936

WP(C).No. 13911 of 2010 (L)

PETITIONER:

GOPALAKRISHNAN NAIR, S/O/. PACHU PILLAI,
PUTHENPURAKKAL VEEDU, THEVALLY, PALACE WARD,
KOLLAM WEST VILLAGE, KOLLAM DISTRICT.

BY ADV. SRI.B.MOHANLAL

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, COLLECTORATE, KOLLAM.
2. THE COASTAL URBAN CO-OPERATIVE BANK LIMITED, KOLLAM, REPRESENTED BY ITS SECRETARY, CUTCHERY.P.O, KOLLAM-13.
3. SRI.VASUDEVAN NAIR, S/O.ANANTHAN NAIR, VIMALA NIKETHAN, KANNIMELCHERRY SHAKTHIKULANGARA VILLAGE, KOLLAM.
4. SMT.VIMALA PILLAI, W/O.VASUDEVAN NAIR, VIMALA NIKETHAN, KANNIMELCHERRY SHAKTHIKULANGARA VILLAGE, KOLLAM.
5. SMT.KRISHNA KUMARI, W/O.CHANDRA BOSE, RADHA MANDIRAM, KANNIMELCHERRY SHAKTHIKULANGARA VILLAGE, KOLLAM.

R3 & 4 BY ADV. SRI.R.SATISH KUMAR
R5 BY ADV. SRI.C.RAJENDRAN
R2 BY ADV. SRI.P.R.PREMACHANDREN
R2 BY ADV. SMT.T.S.MAYA (THIYADIL)
BY GOVERNMENT PLEADER SRI. GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 20-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1 : THE TRUE COPY OF THE SALE DEED NO. 2813/2006 OF KOLLAM SUB REGISTRY.
- EXHIBIT P2 : THE TRUE COPY OF THE PROPERTY TAX RECEIPT DATED 21.04.2010 PAID BY THE PETITIONER IN RESPECT OF THE PROPERTY FOR THE YEAR 2007 TO 2010-2011 TO THE SHAKTHIKULANGARA VILLAGE.
- EXHIBIT P3 : THE TRUE COPY OF THE PROPERTY TAX PAID BY THE PETITIONER IN RESPECT OF THE HOUSE FOR THE YEAR 2010-2011 DATED 11.04.2010.
- EXHIBIT P4 : THE TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 23.11.2006 OBTAINED BY THE PETITIONER FROM THE SUB REGISTRAR OFFICE, KOLLAM IN RESPECT OF THE PROPERTY COVERED IN EXT.P1 AND P2.
- EXHIBIT P5 : THE TRUE COPY OF THE VILL NO. 94/1989 DATED 27.12.1989 OF KOLLAM SUB REGISTRY.
- EXHIBIT P6 : THE TRUE COPY OF THE SALE DEED NO. 2378/2005 OF KOLLAM SUB REGISTRY.
- EXHIBIT P7 : THE TRUE COPY OF THE REPRESENTATION DATED 21.04.2010 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

RESPONDENT(S) EXHIBITS

- EXHIBIT R2(a) : TRUE COPY OF AFFIDAVIT FILED BY KRISHNAKUMARI
- EXHIBIT R2(b) : STATEMENT OF ACCOUNTS OF KRISHNAKUMARI
- EXHIBIT R2(c) : TRUE COPY OF THE AWARD NO. 904/03
- EXHIBIT R2(d) : TRUE COPY OF THE E.P. IN AWARD NO. 904/03
- EXHIBIT R2(e) : TRUE COPY OF THE EA DEMAND NOTICE NO. 2036/03 DATED 24TH NOV. 2003.
- EXHIBIT R2(f) : TRUE COPY OF THE NOTICE OF SALE.

/TRUE COPY/

P.A. TO JUDGE.

V. CHITAMBARESH, J

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Dated this the 20th day of January, 2015

JUDGMENT

The second respondent has obtained an award against the fifth respondent in ARC No. 904/2003. The award is put into execution and proceedings for sale have commenced. It appears that the fifth respondent had sold the property to respondents 3 and 4 initially. The petitioner claims to be a transferee of the property from respondents 3 and 4.

2. The second respondent contends that the fifth respondent had mortgaged the property in its favour. It is further stated that any sale thereafter could only be subject to the mortgage. The petitioner on the other hand maintains that he is a bonafide transferee without notice. The petitioner asserts that no encumbrance was ever noted while purchasing the property by him.

3. It is open to the petitioner to put forward his claim in the execution proceedings pending. It is for the executing authority to decide about the title to the property. Whether the

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sale is subject to the mortgage or without encumbrance is the moot point. This court under Article 226 of the Constitution of India cannot delve deep into those aspects in the absence of evidence.

4. It is made clear that the petitioner can urge all his contentions as and when the property is proceeded against. It is open to the executing authority to consider about the propriety of the sale proposed. Further proceedings for sale shall be put on hold for a period of one month to enable the petitioner to make a motion in that regard. No costs.

The Writ Petition is disposed of.

**V. CHITAMBARESH
JUDGE**

ncd