

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WP(C).No. 10693 of 2015 (J)

PETITIONER(S):

VARGHESE J., AGED 67 YEARS,
S/O.JOSEPH (LATE), MADAPPILLY HOUSE,
THOTTAKAM P.O., VAIKOM, KOTTAYAM DISTRICT.

BY ADVS.SRI.J.JULIAN XAVIER,
SRI.FIROZ K.ROBIN.

RESPONDENT(S):

1. THOMAS, S/O.JOSEPH, AGED 49, MADAPPILLY HOUSE,
THOTTAKAM KARA, THALAYAZAM VILLAGE, VAIKOM TALUK,
KOTTAYAM DISTRICT-686 145.
2. LALI THOMAS, AGED 47, W/O.THOMAS,
PRESENTLY RESIDING AT 79 WOODLANDS NURSES HOME,
B.2.9.6.JD; RADDLE BARAN ROAD, SELLYOAK, BIRMINHAM,
WEST MIDLANDS, UK.
3. VARGHESE, S/O.DEVASSIA @ VARGHESE,
AGED 42, KEECHERIYIL HOUSE, MOOLAKULAM VILLAGE,
KEEZHOOR P.O., KOTTAYAM DISTRICT-686 605.
4. MARY, W/O.DEVASSIA @ VARGHESE,
AGED 62, KEECHERIYIL HOUSE, MOOLAKULAM VILLAGE,
KEEZHOOR P.O., KOTTAYAM DISTRICT-686 605.
5. STATE BANK OF INDIA,
REPRESENTED BY ITS BRANCH MANAGER,
VAIKOM BRANCH, VAIKOM-686 141.
6. REVENUE DIVISIONAL OFFICER,
PALA, KOTTAYAM DISTRICT-686 575.
7. S.I. OF POLICE,
VAIKOM POLICE STATION, VAIKOM-686 141.

R5 BY ADV. SRI.R.S.KALKURA, SC, SBI.
R6 & R7 BY SR. GOVT. PLEADER SRI.JOSEPH GEORGE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 01-04-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT P1- A TRUE COPY OF THE GIFT DEED DATED 25/08/2008.
- EXHIBIT P2- A TRUE COPY OF THE OP. NO.624/2014 OF THE FAMILY COURT,
KOTTAYAM AT ETTUMANOOR.
- EXHIBIT P3- A TRUE COPY OF THE SALE DEED DATED 29/07/2013.
- EXHIBIT P4- A TRUE COPY OF THE PETITION NO.M2-730/2015 FILED BY THE
PETITIONER BEFORE THE 6TH RESPONDENT.
- EXHIBIT P5- A TRUE COPY OF THE NOTICE DATED NIL ISSUE TO THE
RESPONDENTS 1 AND 2.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

P.R. RAMACHANDRA MENON, J.

W.P(C). No. 10693 of 2015

Dated this the 1st day of April, 2015

J U D G M E N T

The petitioner has approached this Court with the following prayers:

- "i. To issue a writ of mandamus or any other appropriate writ, order or direction declaring that the transfer of property as evidenced by Exts.P1 and P3 are void in the light of Section 23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and further direct the 6th respondent to declare that the transfer of properties effected as per Exts.P1 and P3 are void.*
- ii. To issue a writ of mandamus or any other appropriate writ, order or direction directing the 5th respondent bank not to proceed against the property covered by Ext.P1 till a decision on Ext.P4 is taken by the 6th respondent.*
- lii. To direct the 7th respondent to take appropriate action against the overacts of the respondents 3 and 4 to evict the petitioner from the residential house which is constructed in the property covered by Ext.P1.*
- iv. Alternatively direct the 5th respondent to consider and pass orders on Ext.P4 within a time frame fixed by this Hon'ble Court and further direct the 5th respondent not to dispossess the petitioner from the property covered by Ext.P1 till a decision is taken on Ext.P4 by the 6th respondent.*

- v. *To award cost of these proceedings*
- vi. *To grant such other reliefs that may be deemed just and proper by this Hon'ble Court."*

2. Heard the learned counsel for the petitioner, learned counsel for the respondent Bank and the learned Government Pleader appearing for the respondents 6 & 7.

3. The learned counsel for the petitioner submits that, the petitioner is constrained to move this Court because of the coercive proceedings now being taken by the respondent Bank and also in view of the course of action pursued by the party respondents herein.

4. The learned counsel appearing for the Bank submits that, in view of the default committed by the borrowers/Guarantors, who are the party respondents herein, appropriate steps were taken, just alerting them to satisfy the due amount and that no steps have been taken under the SARFAESI Act, so far. But for intimating that, if they failed to meet the requirements by satisfying the due amount, appropriate steps will be taken under the R.R. Act/SARFAESI Act, no coercive steps have been taken.

5. Learned counsel for the petitioner points out that, with regard to the claim mooted by the petitioner as per Ext.P4 before the 6th respondent, against the party respondents, the matter requires to be considered and finalised by the 6th respondent/Revenue Divisional

Officer, who is the competent authority under Section 23(1) of the Maintenance and Welfare of Parents and Citizens Act, 2007. Prayer is to cause the same to be considered and finalised within a reasonable time.

6. In view of the limited extent of relief sought for, this Court does not find it necessary to issue notice to the party respondents. The writ petition is disposed of, directing the 6th respondent/Revenue Divisional Officer to consider and pass appropriate orders on Ext.P4 with notice to the opposite parties therein who are the party respondents herein. It shall be done, at the earliest, at any rate, within 'three months' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of this judgment along with a copy of the writ petition before the 6th respondent for further steps.

Sd/-

P.R. RAMACHANDRA MENON, JUDGE.

Pn