

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C).No. 10960 of 2015 (T)

PETITIONER:

THULASEE BHAI, D/O.KUNJUKUNJU, AGED 74 YEARS,
RESIDING AT KUNNIL PUTHEN VEEDU,
MEVANAKONAM CHERRY, PARIPALLY VILLAGE,
KOLLAM DISTRICT.

BY ADVS.SRI.R.NIKHIL
SRI.BINU PAUL (NETTOOR)
SRI.P.ABDUL RAZAK

RESPONDENTS:

1. THE SPECIAL SALE OFFICER, KOLLAM CIRCLE OFFICE,
OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES, KOLLAM - 691 001.
2. THE ASSISTANT REGISTRAR SPECIAL SALES,
OFFICE OF THE JOINT REGISTRAR OF
CO-OPERATIVE SOCIETIES, KOLLAM-691 001.
3. NADAIKKAL SERVICE COOPERATIVE BANK NO.1874
REPRESENTED BY ITS SECRETARY, KALLUVATHUKKAL,
KARAMKODU, KOLLAM - 691 578.
4. THE SECRETARY, NADAIKKAL SERVICE CO-OPERATIVE
BANK NO.1874, KALLUVATHUKKAL, KARAMKODU,
KOLLAM - 691 578.
5. THE ARBITRATOR, SPECIAL SALES OFFICER,
NADAIKKAL SERVICE COOPERATIVE BANK NO.1874,
KALLUVATHUKKAL, KARAMKODU, KOLLAM - 691 578.
6. SREERANJINI, W/O.RAJEEV RANGON,
AGED ABOUT 39 YEARS, RESIDING AT DEEPAM,
THAZHAM WEST, NEENAD VILLAGE, CHATHANNOOR,
KOLLAM DISTRICT 691 572.
7. RAJEEV RANGON, S/O.RANGON, AGED ABOUT 47 YEARS,
RESIDING AT PRIYAM, MEENCHIRA ROAD, END OF
MANAKKAPARAMBU ROAD, PONEKKARA,
AIMS P.O, EDAPALLY, ERNAKULAM DISTRICT - 682 024.
8. LATHIKA BHAI, D/O.THULASEE BHAI, AGED ABOUT 39,
RESIDING AT RENJITH BHAVAN, PAMPURAM,
PARIPALLY VILLAGE, KOLLAM DISTRICT-691 574.

R8 BY ADVS. SRI.ARUN BABU

SRI.G.HARIPRASAD

R3 & R4 BY ADVS. SRI.LIJU. M.P

SRI. VINOD BABU M.U.

R1, R2 & R5 BY GOVT. PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06-10-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 10960 of 2015 (T)

PETITIONER'S EXHIBITS:

EXT.P1 - A TRUE COPY OF THE SALE DEED BEARING NO.526/1976 OF CHATHANOR SRO DATED 21.02.1976

EXT.P2 - TRUE COPY OF THE LAND TAX RECEIPT DATED 09.05.2014

EXT.P3 - TRUE COPY OF THE PLAINT IN OS NO.236/2012 BEFORE THE HON'BLE MUNSIFF'S COURT, PARAVOOR.

EXT.P4 - A TRUE COPY OF THE PETITION FOR TEMPORARY INJUNCTION

EXT.P5 - A TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS 1 AND 3

EXT.P6 - A TRUE COPY OF THE NOTICE DATED 20.03.2015

EXT.P7 - A TRUE COPY OF THE REPRESENTATION DATED 28.03.2015

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.10960 of 2015 T

Dated this the 6th day of October, 2015

JUDGMENT

The petitioner is said to be the absolute owner in possession of the property covered by Exhibit P1. Respondents 6 and 7 are the owners of the neighbouring property, having purchased it from the eighth respondent, the daughter of the petitioner.

2. It is the case of the petitioner that respondents 6 and 7, in the course of time, after obtaining a loan from the third respondent Bank, committed default. As part of the recovery proceedings, the third respondent Bank has brought respondents 6 and 7's property for sale.

3. Apprehending that the pathway leading to the said property, allegedly not belonging to those respondents, is also being sold along with their mortgaged property, the petitioner has filed the present writ petition.

4. The twin contentions on the part of the petitioner are that, as she is not a signatory to the sale deed executed by the eighth respondent, the pathway has never been conveyed to respondents 6 and 7. The other contention is that the title dispute concerning the pathway has already been pending before a civil court.

5. The first respondent in his counter affidavit (on its face, it reads as if the fifth respondent had filed it) has emphatically stated that the sale of the mortgaged property does not include the pathway.

6. In the light of the clarification supplied by the first respondent, the learned counsel for the petitioner requires this Court to dispose of the writ petition recording the statement of the first respondent that the pathway is not the subject matter of the sale in auction.

7. The learned counsel for the third respondent Bank has submitted that the third Bank is concerned only with

the mortgaged property, and if the pathway is not part of it, the Bank has no grievance in that regard.

In the facts and circumstances, having regard to the submissions of the learned counsel on either side, this Court disposes of the writ petition specifically placing on record the statement of the first respondent that the disputed pathway, which is the subject matter of a civil suit, is not part of the sale initiated at the instance of the third respondent Bank. No order as to costs.

Dama Seshadri Naidu, Judge

tkv