

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

WP(C).No. 11725 of 2015 (M)

PETITIONER :

AMMAD KOYA,
AGED 63 YEARS, S/O.MAYEEN HAJI,
CRESCENT HOUSE, EDAPRAM KANDY
UNNIKULAM, KOYILANDY-673574.

BY ADVS.SRI.NIRMAL S.
SMT.VEENA HARI

RESPONDENT :

THE AUTHORIZED OFFICER,
KERALA GRAMIN BANK, REGIONAL OFFICE,
KOZHIKODE-673 001.

BY ADV. SRI.T.R.RAVI, SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12-08-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Mn

...2/-

WP(C).No. 11725 of 2015 (M)

APPENDIX

PETITIONERS' EXHIBITS :

EXT.P1 TRUE COPY OF THE NOTICE U/S.13(4) DATED 10.03.2015.

EXT.P2 TRUE COPY OF THE ASSIGNMENT DEED NO.1083/14 DT. 22.04.2014.

**EXT.P3 TRUE COPY OF THE ENCUMBRANCE CERTIFICATE ISSUED DT.
22.04.2014.**

**EXT.P4 TRUE COPY OF THE REGISTERED JENM ASSIGNMENT DEED
NO.272/2012 DATED 30.01.2012.**

EXT.P5 TRUE COPY OF THE PARTITION DEED NO.1168/2002 DT.16.05.2002.

EXT.P6 TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DT. 25.03.2015.

RESPONDENT(S)' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

Mn

A. MUHAMED MUSTAQUE, J

W.P.(C).No. 11725 of 2015

Dated this the 12th day of August, 2015

JUDGMENT

The petitioner claiming title and possession in respect of 7.75 cents of land and with a house therein in Re-survey no.109/1, Kacheri Desom, Kozhikode has approached this Court assailing SARFAESI proceedings initiated by the Bank from the property.

2. The petitioners case is that the no equitable mortgage has been created by the predecessor interest of the petitioner. Therefore, the Bank cannot proceed against the property.

3. On the other hand, the learned Standing Counsel for the Bank submits that the there is a valid mortgage and they are entitled to proceed against the petitioner. Though, apparently challenges made in the writ petition is in respect of SARFAESI proceedings, the issue is not in fact relating to the SARFAESI but related to the title of the petitioner.

4. This Court is of the view, issue is a private dispute and cannot be decided invoking Public Law remedy. Whether

a petitioner derived a right over the right of the Bank is to be declared by a Competent Civil Court. If this Court has to interfere with the SARFAESI proceedings, necessarily, this Court has to declare the title of the petitioner in respect of the property.

Therefore, this Court is of the view that the petitioner has an alternative remedy before the Competent Civil Court to seek appropriate relief against the Bank based on the title. With a liberty to approach Civil Court, the writ petition is disposed of. All issues are left open. To work out alternative relief to the petitioner, coercive steps shall be deferred for a period of two months from today.

Sd/-

A. MUHAMED MUSTAQUE, JUDGE

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