

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 17223 of 2011 (C)

PETITIONER :

**ABOOBACKAR KOOTHARADAN, AGED 51 YEARS,
S/O. MOIDEEN KUTTY, KOOTHARADAN HOUSE, KALAMBADY,
MALAPPURAM DISTRICT.**

**BY ADVS.SRI.C.A.NAVAS
SRI.SHIRAZ ABDULLA
SRI.T.K.SASIKUMAR
SMT.C.S.SIMI**

RESPONDENT(S):

- 1. THE VILLAGE OFFICER,
NEDIYIRUPPU VILLAGE, NEDIYIRUPPU P.O.,
MALAPPURAM DISTRICT. PIN-675 053**
- 2. THAHSILDAR,
ERANADU TALUK, MANCHERY,
MALAPPURAM DISTRICT-675 051**
- 3. THE BRANCH MANAGER,
FEDERAL BANK LTD., MONGAM.P.O,
MALAPPURAM DISTRICT. PIN-675 054**
- 4. THE DEPUTY GENERAL MANAGER,
FEDERAL BANK LTD., REGIONAL OFFICE, FEDERAL TOWERS,
SHAKTHAN THAMPURAN NAGAR.P.O, TRICHUR-680 001.**
- 5. THE CHIEF MANAGER,
FEDERAL BANK LTD., REGIONAL OFFICE, FEDERAL TOWERS,
SHAKTHAN THAMPURAN NAGAR, TRICHUR-680 001.**

***ADDL.R6 TO R8 IMPEADED**

***ADDL.R6: K.P.ABDUSALAM, S/O.MUHAMMED HAJI,
KONDASANPARAMBIL, PADIPURACKAL HOUSE,
MORAYOOR AMSOM, MONGAM, ERANAD TALUK,
MALAPPURAM DISTRICT**

***ADDL.R7: C.KHADEEJA,W/O.MAMMADEESA,
KUMBALAPARAMBIL, MUSLIYARANGADI,
NEDIYIRUPPU.P.O, MALAPPURAM DISTRICT.**

WP(C).NO.17223/2011

*ADDL.R8: MAMMADEESA, S/O.MUHAMMED,
KUMBALAPARAMBIL, MUSLIYARANGADI,
NEDIYIRUPPU.P.O., MALAPPURAM DISTRICT.

*ADDL.R6 TO R8 ARE IMPEADED VIDE ORDER DATED 1/9/2011
IN IA.NO.13302/2011

R1 & R2 BY GOVERNMENT PLEADER SRI.ABDUL KHADER
R3 TO R5 BY ADVS. SRI.GEORGE VARGHESE (MANACHIRACKEL)
SMT.LIZA P.CHERIAN
ADDL.R6 TO R8 BY ADV. SRI.K.VIDYASAGAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 26-06-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE RELEVANT PART OF AUCTION NOTICE**
- P2 COPY OF THE CHELLAN DATED 20/02/2010 FOR PAYMENT OF RS.1,41,850/- TO THE RESPONDENTS 3 TO 5**
- P3 COPY OF THE APPLICATION DATED 10/03/2010**
- P4 COPY OF THE COMMUNICATION LETTER NO.TCRR/MA/SARFESI 280/1195/2010 DATED 19/04/2010**
- P5 COPY OF THE RECEIPT DATED 21/04/2010**
- P6 COPY OF THE RECEIPT DATED 28/04/2010**
- P7 COPY OF THE CERTIFICATE DATED 16/06/2010**
- P8 COPY OF THE SALE DEED NO.3279 DATED 14/07/2010**
- P9 COPY OF THE ENCUMBRANCE CERTIFICATE DATED 17/09/2010**
- P10 COPY OF THE REPRESENTATION DATED 18/09/2010**
- P11 COPY OF THE ORDER DATED 12/08/2010 IN IA.NO.1525/2010 IN IA.2933/2009 IN UNREGISTERED SECURITIZATION APPLICATION**
- P12 COPY OF THE COMMUNICATION NO.236/2010 DATED 20/09/2010**
- P13 COPY OF THE APPLICATION DATED 22/11/2010**
- P14 COPY OF THE REFER REPORT DATED 22/11/2010**
- P15 COPY OF THE JUDGMENT DATED 07/11/2012 IN OP(DRT) NO.3722/2012**

RESPONDENT'S EXHIBITS:

- R6(A) COPY OF THE SALE NOTICE DATED 30/12/2009**
- R6(B) COPY OF THE POSTAL COVER DATED 1/1/2010 TO THE 2ND PETITIONER.**
- R6(C) COPY OF THE POSTAL COVER DATED 1/1/2010 TO THE 3RD PETITIONER.**
- R6(D) COPY OF THE ORDER DATED 01/2/2010**
- R6(E) COPY OF THE I.A.NO.552/10 AND DEMAND DRAFTS FOR RS.1.98 LAKHS**
- R6(F) COPY FO THE ORDER DATED 5/3/2010**
- R6(G) COPY OF THE DEMAND DRAFTS FOR RS.67000/-**

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- R6(H) COPY OF THE RECEIPT FOR RS.50,000/- DATED 26/3/2010
- R6(I) COPY OF THE RECEIPT FOR RS.50,000/- DATED 10/4/2010
- R6(J) COPY OF THE RECEIPT FOR RS.1,25000/- DATED 29/3/2011
- R6(K) COPY OF THE I.A.NO.1525/10 AND DEMAND DRAFTS FOR RS.1 LAKH DATED 18/5/2010
- R6(L) COPY OF THE ORDER DATED 12/8/10
- R6(M) COPY OF THE ORDER DATED 29/3/11
- R6(N) COPY OF THE ORDER DATED 28/6/2011 OF THE DEBTS RECOVERY TRIBUNAL
- R6(O) COPY OF THE APPLICATION SUBMITTED BY THE 1ST APPLICANT BEFORE THE FEDERAL BANK MONGAM BRANCH FOR ONE TIME SETTLEMENT.
- R6(P) COPY OF THE ORDER DATED 9/11/2010 OF THE DEBTS RECOVERY TRIBUNAL
- R6(Q) COPY OF THE ORDER DATED 03/4/2012 OF THE DEBTS RECOVERY TRIBUNAL
- R6(R) COPY OF THE PETITION FILED BY THE ADDITIONAL 6TH TO 8TH RESPONDENTS BEFORE THE DEBTS RECOVERY TRIBUNAL
- R6(S) COPY OF THE ORDER DATED 20/1/2015 PASSED BY THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM IN IA.163/2015 IN IA.2833/2009 IN UNREGISTERED S.A.

/TRUE COPY/

P.A.TO JUDGE

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K. VINOD CHANDRAN, J

W.P(C) No.17223 of 2011

Dated this the 26th day of June, 2015

J U D G M E N T

The petitioner is aggrieved with the fact that despite a sale having been effected to the petitioner by the 3rd respondent Bank as per Ext.P7 sale certificate and Ext.P8 sale deed, no mutation has been effected. The additional respondents 7 and 8 are the borrowers and additional 6th respondent is the guarantor of the loan availed from the 3rd respondent. The property mortgaged and now sold to the petitioner belongs to the additional 6th respondent. Admittedly, default was committed in the loan account and the 3rd respondent proceeded under the SARFAESI Act, 2002. The property was brought to sale and sold to the petitioner as noticed hereinabove by Ext.P7 and P8. The petitioner applied for mutation under the Transfer of Registry Rules, 1966. However, the same was declined since there was an interlocutory order passed by the Debt Recovery Tribunal, Ernakulam (Kerala

and Lakshadweep) directing status quo to be maintained. The aforesaid order by the DRT is produced at Ext.P11 and is, in an application filed by the additional respondents 6 to 8 to set aside the sale. The application is said to have been dismissed on 19.06.2015. The petitioner seeks mutation while the additional respondents 6 to 8 asserts that there would be further proceedings taken by the additional respondents and mutation should be kept in abeyance till then.

2. It is trite that mutation as such does not confer any title and as of now the title squarely rests on the shoulder of the petitioner by virtue of Exts.P7 and P8 sale certificate and the sale deed. The application for setting aside the sale has also been rejected by the Tribunal. True there are remedies provided from such a rejection. But however that need not detain the revenue authority from carrying on transfer of registry. Any mutation effected in the name of the petitioner would be subject to the

proceedings if at all taken by the additional respondents 6 to 8. Joy Kutty Thomas v. Village Officer [2009(3) KLT 914], though in a different context, would govern the issue herein too.

In such circumstance, writ petition is allowed directing the 1st respondent to carry out mutation of the property within a period of one month from the date of production of a certified copy of this judgment.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

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P.A to Judge