

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WP(C).No. 25798 of 2005 (U)

PETITIONER :

**T.R. JOSEPH,
THOTTAMKARA,
ARoor P.O., SHERTALLAI.**

BY ADV. SRI.V.G.ARUN

RESPONDENT(S) :

- 1. THE SOUTH INDIAN BANK LIMITED,
MARKET ROAD BRANCH, COCHIN-35
REPRESENTED BY ITS MANAGER.**
- 2. THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL (KERALA AND LAKSHADWEEP)
8TH FLOOR, K.S.H.B. BUILDING, PANAMPALLY NAGAR
ERNAKULAM.**
- 3. THE DEBTS RECOVERY TRIBUNAL
(KERALA AND LAKSHADWEEP), ERNAKULAM,
REPRESENTED BY ITS REGISTRAR.**
- 4. M/S. CORAL SEA FOODS,
PALLURUTHY, COCHIN-6.**

**R1 BY ADV. SRI.K.PRABHAKARAN, SC
R2 & R3 BY GOVT.PLEADER SRI. R. RANJITH**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

Mn

...2/-

APPENDIX

PETITIONER'S EXHIBITS :

- EXT.P1 : COPY OF THE SALE DEED NO. 1303 DATED 31-5-1991.
- EXT.P2 COPY OF THE SALE DEED NO. 404 DATED 18-2-1986.
- EXT.P3 COPY OF THE EMCUMBRANCE CERTIFICATE NO. 4618 DATED 30-5-1991.
- EXT.P4 COPY OF THE BUILDING TAX RECEIPT DATED 25-10-1994.
- EXT.P4(a) COPY OF THE BUILDING TAX RECEIPT DATED 13-10-2004.
- EXT.P5 COPY OF THE POSSESSION CERTIFICATE NO. 2619/98 DT. 28-12-1998.
- EXT.P6 COPY OF THE TAX RECEIPT NO. 4210021 DATED 4-6-2004.
- EXT.P7 COPY OF THE MORTGAGE DEED DATED 27-3-1999.
- EXT.P8 COPY OF THE PROCLAMATION OF SALE – DRC NO. 280/SIB/EKM DATED 17-6-2005.
- EXT.P9 COPY OF THE OBJECTION FILED BY THE PETITIONER DT. 20-6-2005.
- EXT.P10 COPY OF THE ACK. CARD DATED 28-6-2005.
- EXT.P11 COPY OF THE DECREE IN OS NO. 93/1989 DT. 19-3-90 OF THE SUB COURT OF KOCHI.
- EXT.P12 COPY OF THE CLAIM PETITION FILED IN OA 18 OF 1999 DATED 2-8-2005.

(Contd...)

WP(C).No. 25798 of 2005 (U)

EXT.P13 COPY OF THE COUNTER FILED BY FIRST RESPONDENT IN DRC
NO. 280/SIB/EKM DATED 3-8-2005.

EXT.P14 COPY OF THE ORDER IN IA NO. 1327/2005 IN OA-K 18/1999 DATED
3-8-05 OF THE DEBT RECOVERY TRIBUNAL.

RESPONDENT'S EXHIBITS : NIL

//TRUE COPY//

P.S. TO JUDGE

Mn

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.25798 OF 2005 (U)

Dated this the 14th day of October, 2015

J U D G M E N T

The petitioner is stated to have purchased property measuring 7.5 cents in Survey No.419/4A of Aroor Village from one Ponnappan through Ext.P1 sale deed dated 30.5.1991. The said Ponnappan acquired property from the 4th respondent cover of Ext.P2 document dated 8.2.1986. When the petitioner purchased the said property, he also obtained a non-encumbrance certificate from the revenue officials, which is produced as Ext.P3. It is stated that, after purchasing the property, he has been in enjoyment of the property and also paid building tax and obtained loans by depositing title deeds of the property. By Ext.P8 notice dated 17.6.2005, the 2nd respondent intimated the petitioner of the sale of the property in question on 22.7.2005 in proceedings that were pending before the said authority. By Ext.P9 reply, the petitioner informed the 2nd respondent that he did not have any notice of the decree that was stated to have been passed in respect of the property in question. Counsel for the petitioner would submit that on enquiries made by the petitioner it was found that Ext.P11 decree had been passed, in O.S.No.93/1989 before the Sub Court, Kochi, on 19.3.1990, for realisation of money from the 4th respondent. Ext.P11 decree was said to be executed through the 3rd

respondent by the bank. The petitioner then challenged Ext.P8 notice, received by him from the 2nd respondent, in W.P.(C). No.21701/2005, which was disposed by judgment dated 26.7.2005 directing the petitioner to file a claim petition before the 2nd respondent, and the 2nd respondent to decide the matter after hearing the petitioner. Ext.P12 is the claim petition filed by the petitioner, in response to which, the 1st respondent bank filed Ext.P13 counter affidavit. Thereafter, the 2nd respondent proceeded to adjudicate the matter, and by Ext.P14 order, dismissed the claim petition filed by the petitioner. In the writ petition, Ext.P14 is impugned inter alia on the ground that the petitioner, being a bona fide purchaser for value without notice of the property in question, the rights accrued to the 1st respondent bank, pursuant to Ext.P11 decree could not be used against him to deprive him of title that he had validly obtained over the property.

2. In the counter affidavit filed by the 1st respondent bank, it is stated that Ext.P14 order was passed after hearing the petitioner and the respondent bank. On a perusal of Ext.P14 order itself, I find that the 2nd respondent specifically finds that the mortgage of the property to the bank by deposit of title deeds was as early as on 3.10.1980. The sale transaction pursuant to which the petitioner claims title over

the property accrued subsequent to the mortgage, and this fact was not denied by the petitioner before the 2nd respondent. It was under these circumstances that the 2nd respondent found that the subsequent purchasers would acquire only an equity of redemption and that the petitioner's right would be limited to redeeming the property by payment of the amount due to the bank on the mortgage. The claim petition preferred by the petitioner was rejected on the said ground.

3. I have heard the learned counsel for the petitioner as also the learned Standing counsel for the respondent bank.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I find the reasons stated in Ext.P14 order to be legally correct and hence I see no reason to interfere with Ext.P14 order of the 2nd respondent. The writ petition, in its challenge against the said order therefore fails, and is accordingly dismissed.

A.K.JAYASANKARAN NAMBIAR
JUDGE

prp/15/10/15