IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937

WP(C).No. 18083 of 2015 (I)

PETITIONER(S) :

HOUSING DEVELOPMENT FINANCE CORPORATION LIMITED,
(HDFC LTD. IN SHORT), RAMON HOUSE,
169 BANK BAY RECLAMATION, MUMBAI- 400 020,
REPRESENTED BY THE AUTHORIZED OFFICER, HDFC HOUSE,
3RD FLOOR, RAVIPURAM JUNCTION, M.G.ROAD,
KOCHI- 682 015.

BY ADVS.SRI.C.P.SAJI
SMT.P.DEEPA MOHAN

RESPONDENT(S) :
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1. VILLAGE OFFICER,
POOVARANI, MEENACHIL TALUK, EDAMATTAM P.O.,
KOTTAYAM DISTRICT , PIN- 686 588.

2. THE KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD.,
DISTRICT CO OPERATIVE BANK BUILDING,
POST BOX NO.140, KOTTAYAM- 686 001.

3. JANCY,
WIFE OF LATE CYRIAC GEORGE, VATTOTH HOUSE,
MEENACHIL P.O., PALA, KOTTAYAM- 686 589.

4. RESHMA,
D/O.LATE CYRIAC GEORGE, VATTOTH HOUSE,
MEENACHIL P.O., PALA, KOTTAYAM- 686 589.

5. RENJU,
SON OF LATE CYRIAC GEORGE, VATTOTH HOUSE,
MEENACHIL P.O., PALA, KOTTAYAM- 686 589.

R1 BY GOVERNMENT PLEADER SMT.M.T.SHEEBA
R2 BY ADV. SRI.SUNIL CYRIAC, S.C

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 07-07-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

Msd.

WP(C).No. 18083 of 2015 (I)

APPENDIX

PETITIONER(S)' EXHIBITS

P1: **TRUE COPY OF THE LOAN AGREEMENT EXECUTED BETWEEN PETITIONER AND LATE CYRIAC GEORGE DATED 20/11/2001.**

P2: **TRUE COPY OF THE SALE DEED NO 1291/2000 DATED 19/04/2000 OF SUB REGISTRY OFFICE, MEENANCHIL.**

P3: **TRUE COPY OF THE HOME IMPROVEMENT LOAN AGREEMENT DATED 22/08/2003 EXECUTED BETWEEN PETITIONER AND LATE CYRIAC GEORGE.**

P4: **TRUE COPY OF THE ORDER OF THE CHIEF JUDICIAL MAGISTRATE DATED 03/04/2013 IN C.M.P.NO.475/2013.**

P5: **TRUE COPY OF THE MAHAZAR PREPARED BY THE ADVOCATE COMMISSIONER DATED 20/04/2013.**

P6: **TRUE COPY OF THE REPORT OF THE SUB REGISTRAR, MEENCHIL ISSUED TO PETITIONER DATED 27/08/2013.**

P7: **TRUE COPY OF THE SKETCH ISSUED BY THE TALUK SURVEYOR TO THE PETITIONER.**

P8: **TRUE COPY OF THE APPLICATION DATED 12/01/2015 SUBMITTED BEFORE THE 1ST RESPONDENT BY THE PETITIONER.**

RESPONDENT(S)' EXHIBITS :

NIL

//TRUE COPY//

P.A.TO JUDGE.

Msd.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.18083 of 2015

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Dated this the 7th day of July, 2015

JUDGMENT

The petitioner is a Housing Development Finance Corporation Limited. The issue in this writ petition pertains to the identification of the property mortgaged by the party respondents with the petitioner. It appears that the party respondents also mortgaged the property to secure the loan from the second respondent Bank. It apparently shows that the borrower had obtained loan from different Institutions after mortgaging the property. The petitioner's case is that the property which is mortgaged situated in Re-Survey No.233/3/2, Block-41, they alone have right as a mortgagee. It is their case that the property claimed by the second respondent by way of mortgage is nothing to do with the above property.

2. On the other hand, learned counsel for the respondent Bank submits that they have prior mortgage and the property claimed by the petitioner and the respondent Bank is one and the same.

3. The disputes of this nature in respect of the property claimed by the parties cannot be resolved through the proceedings under Article 226 of the Constitution or by the Revenue Authority. However, it is incumbent for the Revenue to identify the property claimed by each Institution based on the mortgage deed with reference to the description of the property in the mortgage deed.

In such situation, I am of the view; it is befitting to order the Tahsildar, Meenachil Taluk, Kottayam, to identify the property of the petitioner with the assistance of the Taluk Surveyor, Meenachil Taluk, Kottayam, the petitioner and the second respondent shall make available the respective mortgage deed created by the borrower before the Tahsildar. Thereafter, the Tahsildar with the assistance of the Taluk Surveyor shall complete the entire exercise with notice to both parties within two months and issue a sketch showing the property claimed by each of the banking Institution. The petitioner and the respondent Bank shall produce the original and after comparing with the copy, the Tahsildar shall return the original to the respective Institutions. The petitioner shall produce a copy of the judgment before the Tahsildar for compliance. The question relating to the genuineness of the documents claimed by parties, no doubt, cannot be resolved by any proceedings except through the Court or Tribunal. Therefore, all issues are left open.

The writ petition is disposed of as above.

Sd/-
A.MUHAMED MUSTAQUE, JUDGE

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