

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 22921 of 2009 (I)

PETITIONER(S):

1. SABITHA AZEEZ, AGED 42 YEARS,
W/O.AZEEZ, SOUHRADA, VELANKONAM
AVANAVANCHERI VILLAGE, ATTINGAL,
THIRUVANANTHAPURAM DISTRICT.
2. NISHA, W/O.BASHEER, MANIYANVILA,
BUNGLOW, VAKKOM VILLAGE, VAKKOM,
THIRUVANANTHAPURAM DISTRICT.

**BY ADVS.SRI.P.K.MUHAMMED
SRI.S.VIJI**

RESPONDENT(S):

1. GENERAL MANAGER,
CANARA BANK, CIRCLE OFFICE, M.G.ROAD.
THIRUVANANTHAPURAM.
2. BRANCH MANAGER,
CANARA BANK, CANTONMENT, M.G.ROAD.
THIRUVANANTHAPURAM.
3. INTEGRATED HOUSING DEVELOPERS LIMITED,
(VALLEY VIEW GARDENS), POTHUJANAM LANE, KUMARAPURAM.
THIRUVANANTHAPURAM., REPRESENTED BY ITS MANAGER-683565.
4. MAHESH, S/O.MANOCHARAN,
K.P.N.SADANAM, T.C.3/134, PARUTHIPPARA.
ULLOOR VILLAGE, THIRUVANANTHAPURAM-695011.
5. R.PREMCHAND, S/O.V.P.B.NAIR,
MASTER MARINER, RESIDING AT 'SETHU', POOJAPPURA,
THIRUMALA VILLAGE, THIRUVANANTHAPURAM-695012.
6. REMA B.NAIR, S/O.K.PRAMACHANDRAN NAIR,
RESIDING AT 'SETHU', POOJAPPURA, THIRUMALA VILLAGE,
THIRUVANANTHAPURAM-695012.

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7. R.MOHANDAS, S/O.K.P.RAMACHANDRAN NAIR,
RESIDING AT 'SETHU', POOJAPPURA, THIRUMALA VILLAGE,
THIRUVANANTHAPURAM-695012.

R1 & R2 BY ADV. SRI.P.GOPINATH MENON, SC
R4 BY ADV. SRI.D.KISHORE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1. TRUE COPY OF THE SALE DEED NO.4593/06 ISSUED IN FAVOUR OF 1ST PETITIONER AND HER HUSBAND DATED 30/10/2006
- EXT.P2. TRUE COPY OF THE SALE DEED NO.4594/06 ISSUED IN FAVOUR OF 2ND PETITIONER AND HER HUSBAND DATED 30/10/2006
- EXT.P3. TRUE COPY OF THE ENCUMBRANCE CERTIFICATE ISSUED IN FAVOUR OF THE 1ST PETITIONER
- EXT.P4. TRUE COPY OF THE ENCUMBRANCE CERTIFICATE ISSUED IN FAVOUR OF THE 2ND PETITIONER DATED 8/10/2007
- EXT.P5. TRUE COPY OF LETTER IDSUED BY THE R2 TO 1ST PETITIONER AND HER HUSBAND DATED 27/12/2007
- EXT.P6. TRUE COPY OF LETTER ISSUED BY THE R2 TO 2ND PETITIONER AND HER HUSBAND DATED 27/12/2007
- EXT.P7. TRUE COPY OF THE REPRESENTATION SUBMITTED BY PETITIONERS BEFORE THE R1 DATED 20/8/2008
- EXT.P8. TRUE COPY OF THE JUDGMENT IN WPC.30550/2008 DATED 21/10/2008
- EXT.P9. TRUE COPY OF THE NOTICE ISSUED TO M.A.AZEEZ FROM DISTRICT REGISTRAR'S OFFICE.
- EXT.P10. TRUE COPY OF THE NOTICE ISSUED TO BASHEER FROM DISTRICT REGISTRAR'S OFFICE.
- EXT.P11. TRUE COPY OF THE ACKNOWLEDGEMENT OF PAYMENT OF MONEY IN FAVOUR OF AZEEZ
- EXT.P12. TRUE COPY OF THE ACKNOWLEDGEMENT OF PAYMENT IN FAVOUR OF BASHEER
- EXT.P13. TRUE COPY OF THE LAND TAX RECEIPT IN FAVOUR OF 1ST PETITIONER AND AZEEZ
- EXT.P14. TRUE COPY OF THE LAND TAX RECEIPT IN FAVOUR OF 2ND PETITIONER AND BASHEER

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EXT.P15. TRUE COPY OF THE POSSESSION NOTICE ISSUED BY CANARA BANK
 IN HINDU DAILY.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

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A.MUHAMED MUSTAQUE, J.

W.P.(C) No.22921 of 2009

Dated this the 15th day of July, 2015

JUDGMENT

Petitioners claim to be the *bona fide* purchasers from respondents 3 to 7. The petitioners challenge SARFAESI proceedings initiated against the property purchased by the petitioners from respondents 3 to 7. Admittedly, the property was mortgaged to the first respondent Bank on 7.7.2005. The petitioner appears to have purchased the property only subsequently. The documents produced before this Court would show that the purchase was in the year 2006. The petitioner, in fact, approached this Court in an earlier occasion by filing W.P.(C) No.30550/2008. This Court directed the Bank to consider the petitioners request. It appears that the Bank considered the petitioners request and rejected. Ext.P5 is the communication of the order to the petitioners' request.

2. The petitioner purchased the property which is subject to a mortgage. The petitioner cannot claim a better right than the mortgagor or mortgagee. The right of priority available under law is

in favour of the Bank. Therefore, the Bank is justified in proceeding against the property of the petitioners. There is no merit in this writ petition. Accordingly, this writ petition is dismissed.

However, if the petitioners want to redeem the entire liability, they are free to do so. On payment of the entire liability, the property shall be released to the petitioners.

Sd-

A.MUHAMED MUSTAQUE, JUDGE

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