

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 16TH DAY OF DECEMBER 2015/25TH AGRAHAYANA, 1937

WP(C).No. 20063 of 2015 (G)

PETITIONER(S):

1. GIBBY, AGED 47 YEARS,
S/O. LATE ITTOOP, BUSINESS,
ELUVATHINGAL HOUSE,
P.O.-680 027, PALISSERRY, PALAKKAL VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT.
2. JONCY GIBBY, AGED 39 ,
HOUSE WIFE, W/O. GIBBY, ELUVATHINGAL HOUSE,
P.O. - 680 027 PALISSERRY, PALAKKAL VILLAGE,
THRISSUR TALUK, THRISSUR DISTRICT-680 027.

BY ADV. SRI.P.PAULCHAN ANTONY

RESPONDENT(S):

1. SUB REGISTRAR,
CHERPU, THRISSUR, - 680 561.
2. THE VILLAGE OFFICER,
VENGINNASERRI, THRISSUR, PIN - 680 565.
3. FEDERAL BANK LTD.,
HAVING ITS REGISTERED OFFICE AT ALUVA, HAVING ITS
BRANCH OFFICE AT PUZHAYKAL, THRISSUR DISTRICT,
REPRESENTED BY ITS AUTHORIZED OFFICER/
CHIEF MANAGER/BRANCH HEAD, PIN 680 513.
4. SUNNY, S/O. POOPADI THOMAS, THRISSUR TALUK,
PULLAZHI DESOM VILLAGE, THRISSUR TALUK,
THRISSUR DISTRICT, PIN - 680 012.
5. BABY MON, S/O. POATHOOKARAN GEORGE,
VALAKUNNATHUSSERY DESOM,
CHEVOOR VILLAGE, THRISSUR TALUK, PIN - 680 567.

**R1 & R2 BY GOVERNMENT PLEADER SRI.R.RANJITH
R3 BY SRI.A.ANTONY, SC
ADV. SMT.LEELAMMA ANTONY**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 16-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

mbr/

APPENDIX

PETITIONER(S)' EXHIBITS:

- P1 : COPY OF THE LETTER ISSUED BY THE BORROWER TO THE
3RD RESPONDENT EVIDENCING MORTGAGE BY DEPOSIT OF TITLE DEEDS
DTD.22.7.2009.
- P2 : COPY OF DEMAND NOTICE ISSUED BY THE 3RD RESPONDENT TO THE
BORROWERS U/S.13(2) OF THE SARFAESI ACT, DTD.24.3.2012.
- P3 : COPY OF THE ORDER OF THE HON'BLE CHIEF JUDICIAL MAGISTRATE'S
COURT, THRISSUR IN CRL.MP NO.6881/2012 DTD.28.9.2012.
- P4 : COPY OF THE SALE NOTICE ISSUED BY THE 3RD RESPONDENT TO THE
BORROWERS DTD.6.2.2015.
- P5 : COPY OF THE SALE CERTIFICATE DTD.21.4.2015 ISSUED BY THE
RESPONDENTS IN FAVOUR OF THE PETITIONERS.
- P6 : COPY OF THE ENCUMBRANCE CERTIFICATE DTD.30.12.2014 ISSUED BY THE
1ST RESPONDENT IN RESPECT OF THE SECURED ASSET.
- P7 : COPY OF DRAFT SALE DEED DTD.11.6.2015 PREPARED BY THE
3RD RESPONDENT IN FAVOUR OF PETITIONERS 2 AND 3.

RESPONDENT(S)' EXHIBITS: NIL

//TRUE COPY//

P.S. TO JUDGE

mbr/

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). No. 20063 of 2015

Dated this the 16th day of December, 2015

JUDGMENT

The petitioners in the writ petition are aggrieved by the stand of the 1st respondent in not accepting for registration Ext.P7 draft sale deed on the ground that the the registration of the sale of the property was not possible without first lifting the attachment in respect of the property, at the instance of the Civil Court. The petitioners are the auction purchasers of property, that was offered as security by borrowers of amounts from the 3rd respondent bank. In SARFAESI proceedings, that was initiated against the borrowers, the property was sold to the petitioners, the sale confirmed and delivery of the property effected. Ext.P5 is the sale certificate issued by the 3rd respondent bank. In the writ petition, the grievance of the petitioner is essentially that, when the sale certificate together with Ext.P7 draft sale deed was presented for registration before the 1st respondent, the 1st respondent refused to register the same citing the existence of a prior attachment in respect of the property at the instance of the Civil Court. It is not in dispute that the attachments at the instance of the Civil Court, in respect of the property were all subsequent to the mortgage of the property by the borrower in favour of the 3rd respondent bank. Under the said circumstances, therefore, I am of the view that

going by the decisions of this Court in Madhan S. v. Sub Registrar, Kollam & Others [2014 KHC 249] and Housing Development Finance Corporation and Another v. Sub Registry Officer & Others [2011 KHC 851] the 1st respondent ought to register the sale confirmed in favour of the petitioners, and efface the prior attachments noted in respect of the property in the encumbrance register pertaining to the said property. I accordingly, dispose the writ petition with a direction to the 1st respondent to register the sale confirmed in favour of the petitioner on the petitioner producing a copy of Ext.P5 sale certificate. The 1st respondent shall also ensure that the attachments noted in respect of the property at the instance of the Civil court are effaced from the register. The 1st respondent shall comply with the aforesaid direction within a period of two weeks from the date on which the sale certificate is produced before him by the petitioners.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE