

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 6TH DAY OF NOVEMBER 2015/15TH KARTHIKA, 1937

WP(C).No. 23909 of 2015 (K)

PETITIONER : -

HAFSATH, D/o MOHAMMED (LATE),
PALEMBADIAN AMBALAPARAMBIL,
MANKADA PALLIPURAM P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI
SMT.ANJANA KANNATH

RESPONDENTS: -

1. THE PERINTHALMANNA CO-OPERATIVE AGRICULTURAL AND
RURAL DEVELOPMENT BANK, PERINTALMANNA,
MALAPPURAM DISTRICT, PIN-679 322
REPRESENTED BY ITS SECRETARY/ PRESIDENT.
2. THE SPECIAL SALE OFFICER,
PERINTHALMANNA CO-OPERATIVE AGRICULTURAL AND RURAL
DEVELOPMENT BANK NO.P 505,
PERINTALMANNA, MALAPPURAM DISTRICT, PIN-679 322.
3. THE KERALA STATE FARMER'S DEBTS RELIEF COMMISSION,
OFFICE OF THE KERALA STATE FARMERS' DEBTS RELIEF COMMISSION,
AGRICULTURE URBAN MARKET, VENPALAVATTOM, ANAYARA P.O.,
THIRUVANANTHAPURAM -695 029.

R1 BY ADV.SRI.E.K.MADHAVAN
R1 BY ADV.SRI.VKRISHNA MENON
R1 BY ADV.SMT.P.VIJAYAMMA
R1 BY ADV.SRI.U.K.DEVIDAS
R1 BY ADV.SRI.PRINSUN PHILIP
BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : TRUE COPY OF THE DEATH CERTIFICATE DATED 20.3.2013 ISSUED BY THE REGISTRAR OF BIRTHS AND DEATHS, MANJERI MUNICIPALITY.

EXHIBIT P2 : TRUE COPY OF THE TAX RECEIPT ISSUED BY THE VILLAGE OFFICER, KOOTILANGADI DATED 21.2.1998.

EXHIBIT P2(a) : ENGLISH TRANSLATION OF EXT.P2.

EXHIBIT P3 : TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 8.7.1987.

EXHIBIT P3(a) : RELEVANT PORTION OF ENGLISH TRANSLATION OF EXT.P3.

EXHIBIT P4 : TRUE COPY OF THE PETITION SUBMITTED BY THE PETITIONER BEFORE THE HONB'BLE MINISTER FOR CO-OPERATION DATED 28.5.2014.

EXHIBIT P4(a) : ENGLISH TRANSLATION OF EXT.P4.

EXHIBIT P5 : TRUE COPY OF THE COMMUNICATION DATED 24.9.2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P5(a) : ENGLISH TRANSLATION OF EXT.P5.

EXHIBIT P6 : TRUE COPY OF THE NOTICE ISSUED FROM THE 1ST RESPONDENT DATED 2.1.2015 IN FAVOUR OF THE PETITIONER.

EXHIBIT P6(a) : ENGLISH TRANSLATION OF EXT.P6.

EXHIBIT P7 : TRUE COPY OF THE NOTICE DATED 6.7.2015 ISSUED BY THE 2ND RESPONDENT.

EXHIBIT P7(a) : ENGLISH TRANSLATION OF EXT.P7.

EXHIBIT P8 : TRUE COPY OF THE OBJECTION DATED 21.7.2015 SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.

EXHIBIT P9 : COPY OF THE COMMISSION REPORT SUBMITTED BY THE ADVOCATE COMMISSIONER IN I.A. No. 2421/2012 IN O.S66/2012 ON THE FILES OF SUB COURT, MANJERI.

EXHIBIT P9(a) : ENGLISH TRANSLATION OF EXHIBIT P9.

WP(C).No. 23909 of 2015 (K)

EXHIBIT P10 : COPY OF THE PASS BOOK ISSUED BY THE BANK TO THE LATE
MR. MOHAMMED ALONG WITH ENGLISH TRANSLATION.

EXHIBIT P11 : COPY OF THE COMMUNICATION DATED 4.12.2008 SENT BY THE
JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL),
MALAPPURAM TO THE 1st RESPONDENT.

EXHIBIT P11(a) : ENGLISH TRANSLATION OF EXHIBIT P11.

EXHIBIT P12 : COPY OF THE FAIR VALUE OF LAND IN SURVEY No.7 AND 8 OF
KOTTILANGADI VILLAGE IN VALLIKKAPPATTA DESOM
PUBLISHED BY THE DEPARTMENT OF REGISTRATION,
GOVERNMENT OF KERALA.

RESPONDENTS' EXHIBITS :

EXHIBIT R1(a) : COPY OF THE APPLICATION DATED 9.12.1999.

EXHIBIT R1(b) : COPY OF THE GEHAN IN FORM I.

EXHIBIT R1(c) : COPIES OF THE VOUCHERS DATED 3.1.2000 AND 12.1.2000.

EXHIBIT R1(d) : COPY OF THE LETTER DATED 24.6.2014.

EXHIBIT R1(e) : COPY OF THE ORDER DATED 18.02.2015.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 23909 of 2015

Dated this the 06th day of November, 2015

JUDGMENT

This case, for its proper appreciation, needs an elaborate narration of facts; but only to arrive at a conclusion that this Court is not inclined to adjudicate the issue.

2. The petitioner is the daughter of one Mr. A. P. Muhammed, who died on 03.03.2013 leaving behind nine children, the petitioner being one among them. When the petitioner's father was alive, he succeeded, way back in 1969, to an extent of 2.43 acres of land in a family partition involving his siblings, as has been evidenced by document No.620/1969.

3. Items 1 to 4 in the partition deed are said to have fallen to the share of the petitioner's father, whereas Item No.5 to his sister, and Item No.6 to his mother, who died in 1981. In 1983, Item No.6, the property originally allotted to the mother, after her death, was divided between the petitioner's father and his sister through a registered document.

4. Insofar as Item No.4 in Document No.620/1969 is concerned, the extent being $41 \frac{2}{3}$ cents, the petitioner's father sold it to the petitioner through a registered sale deed bearing Document No.746/1987. Having effected mutation in the relevant revenue records, the petitioner, thus being the owner, is said to have continued to pay the requisite tax concerning the property.

5. The fact that assumes importance is that the entire extent of 2.43 cents, the property originally partitioned through Document No.620/1989, is one contiguous block situated in two survey numbers: Survey Nos. 7 and 8.

6. In 1999, the petitioner's father obtained a housing loan by executing Exhibit R1(b) mortgage deed. At that time, the petitioner's brother was said to have stood surety to the loan. There is an element of controversy concerning the actual amount borrowed by the petitioner's father, the manner of discharge of loan, and also the outstanding amount, regarding which the respondent Bank initiated recovery proceedings. Though the learned counsel for the petitioner has made elaborate submissions concerning all those issues, I am of the

opinion that they may not be relevant for the present adjudicatory purpose.

7. In the light of the provisions of the Kerala State Co-operative (Agricultural and Rural Development Banks) Act, 1984 (the 'Act'), the respondent Bank is entitled to bring the mortgaged property of a defaulter to sale by obviating the judicial recourse: without approaching a competent Civil Court or an Arbitrator.

8. Indeed, the respondent Bank, having exercised its powers under the Act, did bring the mortgaged property of the petitioner's father for sale and eventually became the successful bidder. Before the Bank could have the property registered in its name, the petitioner initially filed Exhibit P8 application before the Sale Officer and later approached this Court. The petitioner, thus, assails the sale in question on a singular ground that in the schedule of the property brought for sale, the respondent Bank has included the petitioner's property as well.

9. In the above factual background, this Court, at the outset, set the bounds of the arguments by doubting the

efficacy of a writ petition to decide disputed questions of either title or, at least, boundary.

10. Keeping the comment of the Court in mind, the learned counsel for the petitioner has strenuously contended that Section 21 of the Act does not provide any relief for the petitioner because, under the said provision, the person staking a claim must have an interest in the same property that had been mortgaged. And, to assail the sale, as a pre-condition, the interested or affected person is required to deposit the entire amount, apart from complying with other statutory parameters.

11. According to the learned counsel, the petitioner has no interest in the property that originally belonged to her father, save to the extent she had purchased in 1987—long prior to her father could obtain any loan from the respondent Bank.

12. The gravamen of the entire contention of the learned counsel for the petitioner is that the property which was brought for sale and knocked down in the respondent Bank's favour does include the petitioner's property, as well.

13. It is also the contention of the learned counsel for the petitioner that while the entire proceedings of the respondent Bank reflected the mortgaged property to be in Survey No.7, Exhibit P7 sale notice, on the other hand, shows the property to be situated in both Survey numbers 7 and 8, thus lending support to the petitioner's contentions.

14. The learned counsel for the respondent Bank is, of course, quick to refute the said allegation contending that the property does lie in Survey No.8 alone. But the Sale Officer, perhaps, has erroneously reflected in Exhibit P7 notice the property as lying in both the survey numbers, contends the learned counsel. According to him, Exhibit P7 is not definitive.

15. Be that as it may, as has been adverted to initially, this Court is not inclined to adjudicate the issue on merits, for the resolution of the issue involves disputed questions of fact. And it needs evidence both oral and documentary. It is trite to observe that this Court adopting summary procedure is ill-suited to undertake any such exercise.

16. As can be seen from the record, initially this Court on 07.08.2015 granted a stay against the confirmation of sale

in favour of the respondent Bank. It was, however, confined to an extent of 41 $\frac{2}{3}$ cents out of the total extent of Ac.1-68 $\frac{1}{2}$ cents. The learned counsel for the petitioner has urged the Court to continue the said stay even if this Court were to conclude that the petitioner should approach the competent Civil Court.

17. The learned counsel for the respondent Bank has, with equal vehemence, opposed the claims and contentions of the petitioner. At any rate, I am not adverting to any of those contentions for the simple reason that this Court is not indulging in an adjudication of the matter on merits.

18. I may, nevertheless, have to address the specific issue raised by the learned counsel for the petitioner that if no interim protection is granted until the petitioner can approach a Civil Court, the respondent Bank may have the sale confirmed in its favour; in such an event, the petitioner will further be compelled to seek the cancellation of the said document, too.

19. I am afraid the said contention does not carry conviction. So long as the petitioner is not a party to a

particular deed of conveyance, in terms of Sections 31 and 32 of the Specific Relief Act, he need not seek the cancellation of the said document. In other words, the conveyance not being *inter-parties*, it does not affect the petitioner's right, if any, concerning the rival claim she has set up. The principle of law, to my mind, will not be different even if the identity of the property is in dispute.

20. The law in this regard is well settled for as far back as in 1940, a Full Bench of the Madras High Court held that a person who is not a party to a decree or a document is not bound to sue for its cancellation. In **Ramaswami v. Rangachariar**¹, quoting with approval **Unni v. Kunchi Amma**,² their Lordships have held thus:

"If a person not having authority to execute a deed or having such authority under certain circumstances which did not exist, executes a deed, it is not necessary for persons who are not bound by it, to sue to set it aside for it cannot be used against them. They may treat it as non-existent and sue for their right as if it did not exist."

21. In **Ponnammal alias Guruvammal v. Kanthammal**³, a learned Single Judge of the same High Court

¹ ILR (1940) Mad 25

² I.L.R.(1890)14 Mad. 26

³ AIR 1952 Mad 552

has observed that it is logically impossible for a person who is not a party to a document or a decree to ask for its cancellation. In this regard, his Lordship has quoted the observations of another learned Single Judge in **Vellayya**

Konar v. Ramaswami Konar⁴, wherein it is observed thus:

"When, the plaintiff seeks to establish a title in himself and cannot establish that title without removing an insuperable obstruction such as a decree to which he has been a party or a deed to which he has been a party, then quite clearly he must get that decree or deed cancelled or declared void 'in toto', and his suit is in substance a suit for the cancellation of the decree or deed even though it be framed as a suit for declaration. But when he is seeking to establish a title and finds himself threatened by a decree or a transaction between third parties, he is not in a position to get that decree or that deed cancelled 'in toto'. That is a thing which can only be done by parties to the decree or deed or their representatives. His proper remedy therefore in order to clear the way with a view to establish his title, is to get a declaration that the decree or deed is invalid so far as he himself is concerned and he must therefore sue for such a declaration and not for the cancellation of the decree or deed."

22. In the facts and circumstances, having regard to the respective submissions of the learned counsel for the petitioner

⁴ ILR (1940) Mad 73

and the learned counsel for the respondent Bank, this Court, without adverting to the merits of the matter, disposes of the writ petition, making it clear that the petitioner is at liberty to approach a competent Civil Court and seek appropriate relief concerning the property said to have been purchased by the petitioner from her father, i.e. the debtor of the respondent Bank.

With the above observations, the writ petition stands disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-