

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

MONDAY, THE 2ND DAY OF MARCH 2015/11TH PHALGUNA, 1936

WP(C).No. 32366 of 2011 (U)

PETITIONERS:

- 1. M.T. RADHAKRISHNAN,
AGED 59 YEARS, S/O LATE THANKAPPAN,
THEKKEKUT HOUSE,
PROPRIETOR, SIVA EXTILES, T.P PURAM
VAZHOOR, KOTTAYAM.**
- 2. T.R. RATNAKUMARI,
AGED 53 YEARS, W/O M.T.RADHAKRISHNAN,
THEKKEKUTT HOUSE
VAZHOOR, KOTTAYAM.**

**BY ADVS.SRI.N.RATHEESH
SMT.SUMA RATHEESH**

RESPONDENT(S):

- 1. STATE BANK OF TRAVANCORE,
REPRESENTED BY BRANCH MANAGER,
PALICKATHODE BRANCH
PALICKATHODE, KOTTAYAM- 696 001.**
- 2. THE GENERAL MANAGER (OPA),
STATE BANK OF TRAVANCORE,
HEAD OFFICE, POOJAPPURA
THIRUVANANTHAPURAM- 695 001.**

**R,R1 BY ADV. SRI.T.SETHUMADHAVAN
R,R1 BY ADV. SRI.PUSHPARAJAN KODOTH
R,R1 BY ADV. SRI.K.JAYESH MOHANKUMAR**

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02-03-2015, ALONG WITH WPC. 32230/2013, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AMG

APPENDIX

PETITIONERS' EXHIBITS

- EXT- P1- TRUE COPY OF THE SALE CERTIFICATE DATED 31-03-2004 ISSUED BY THE PRINCIPAL SUB JUDGE, KOTTAYAM.
- EXT- P2- TRUE COPY OF THE SALE DEED EXECUTED BY THE PETITIONER DATED 14-05-2008.
- EXT- P3- TRUE COPY OF THE SALE DEED EXECUTED BY THE WIFE OF THE PETITIONER DATED 26-08-2008
- EXT- P4- TRUE COPY OF THE REPRESENTATION DATED 19-07-2010 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.
- EXT- P5- TRUE COPY OF THE LETTER DATED 09-09-2010 ISSUED BY THE 1ST RESPONDENT TO THE PETITIONER.
- EXT- P6- TRUE COPY OF THE REPRESENTATION DATED 12-10-2010 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.
- EXT- P7- TRUE COPY OF THE LETTER DATED 15-10-2010 ISSUED BY THE DEPUTY GENERAL MANAGER TO THE PETITIONER.
- EXT- P8- TRUE COPY OF THE DEATH CERTIFICATE OF MOTHER-IN-LAW OF THE PETITIONER.
- EXT- P9- TRUE COPY OF THE JUDGMENT DATED 20-07-2011 PASSED IN WPC No.7632/2011.
- EXT- P10- TRUE COPY OF THE CERTIFICATE DATED 11-10-2011 ISSUED BY THE VILLAGE OFFICER, VAZHOOR VILLAGE.
- EXT- P11- TRUE COPY OF THE LETTER DATED 15-09-2011 OF THE 2ND RESPONDENT.
- EXT- P12- TRUE COPY OF THE SALE NOTICE DATED 31-03-2012 PUBLISHED IN MALAYALAMANORAMA DAILY DATED 31-03-2012.
- EXT- P13- TRUE COPY OF THE SALE NOTICE DATED 11-12-2013 PUBLISHED IN MALAYALAMANORAMA DAILY DATED 11-12-2013
- EXT- P13 (a) - TRUE COPY OF THE NOTICE INVITING TENDER DATED 20-06-2014 ISSUED BY THE RESPONDENT.
- EXT- P14 - STATUS OF ONGOING WORKS IN JULY 2014 PUBLISHED BY THE RESPONDENT.

EXT- P15 - NOTICE INVITING TENDER DATED 27-08-2014 PUBLISHED BY THE
RESPONDENT.

RESPONDENTS' EXHIBITS

NIL

True copy

P.A. To Judge

AMG

C.K. ABDUL REHIM, J.

W.P.(c) No. 32366 OF 2011-U
&
W.P.(c) No. 32230 OF 2013-C

DATED THIS THE 2nd DAY OF MARCH, 2015.

J U D G M E N T

Since the subject matter involved in both these writ petitions is the same property, these cases are considered together and disposed of through this common judgment.

2. The 1st petitioner in W.P (c) No.32366/2011 had defaulted repayment of a loan availed by him from the 1st respondent Bank. The Bank filed a civil suit before the Sub Court, Kottayam as O.S No.283/1990, in which an ex-parte decree was obtained. Property having an extent of 2 Acres 44 cents comprised in Re-Sy No.180/7-2 and 154/10-1 of Vazhoor Village, belonging to one Smt. Chinnamma, who is the mother-in-law of the 1st petitioner, which was mortgaged for securing the loan, was put in court auction in execution of the decree. The Bank had purchased the property in court auction conducted on 27-10-1997. The sale in question was confirmed by the Sub Court on 12-06-2011 and the Sale Certificate was issued in favour of the

respondent Bank on 31-03-2004. The petitioner submitted Ext.P6 representation before the 2nd respondent on 12-10-2010, seeking re-conveyance of the property based on the willingness expressed to pay off the entire liability due to the Bank, along with payment of interest and expenses incurred by the Bank with respect to the litigation. When the said representation was not considered by the respondents, the 1st petitioner approached this court in a writ petition, which was disposed of through Ext.P9 judgment. This court observed that unless the respondent Bank is willing, the court will not be justified in compelling the Bank to accept the request of the petitioner. However, this court observed that since the petitioner is willing to deposit the amount no reason is seen as to why the bank shall not consider the request. The 2nd respondent was directed to deal with Ext.P6 representation, within a time limit stipulated. Exhibit P11 is the consequential order issued by the 2nd respondent. The request made in Ext.P6 was rejected stating that the property was acquired by the Bank as a non-banking asset in satisfaction of its dues as

early as in the year 1997. Since there exist no contractual relationship between the Bank and the 1st respondent, it would not be proper for the Bank to accept the dues in the erstwhile loan account and to re-convey the property. Further it was pointed out that the property was owned by Smt. Chinnamma who died subsequently and she has got legal heirs. Therefore the request of the 1st petitioner cannot be accepted. It is challenging Ext.P11 this writ petition was filed. Inter alia the petitioner is seeking direction to re-convey the property in favour of the legal heirs of Smt. Chinnamma.

3. When the above said property was put in auction by the respondent Bank W.P (c) No.32230/2013 was filed by a third person to the loan transaction. Claim of the petitioner therein is that he has purchased 50 cents of property by virtue of Ext.P1 sale deed from one Smt. P.J. Mani, who in turn had purchased the property from deceased Smt. Chinnamma by virtue of Ext.P2 sale deed. According to the petitioner he was not aware about the court auction and about the sale of the property standing

confirmed in favour of the bank. It was only when the request for mutation was not allowed by the authorities in the Village office, he came to know about the auction. When the sale proclamation was made by the petitioner on 11-10-2013, this writ petition is filed seeking a declaration that the Bank is not entitled to put in auction of 29.5 cents of property out of the total extent of 50 cents covered under Ext.P1 sale deed. Petitioner is also seeking a declaration to the effect that 15 cents out of item No.2 contained in the sale proclamation is not owned by the bank and that the petitioner is in possession of the same.

4. W.P (c) No.32366/2011 was referred by this court to the Kerala Mediation Centre, in order to explore possibility of arriving a settlement, observing that the petitioner had expressed preparedness to pay the entire amounts including upto date interest and cost incurred by the Bank. But the mediation attempts failed and a report to that effect was submitted before this court.

5. While the matter was taken up for consideration this court wanted the Standing Counsel appearing for the

Bank to ascertain as to whether the Bank is willing to re-convey the property on accepting the entire arrears in the loan account as calculated with interest at the rate at which the loan was sanctioned due till date, along with all the costs incurred. But learned Standing Counsel, on the basis of instructions, informed that the property has become a non-banking asset as early as in the year 2004 and the loan account in question does not survive. Therefore it is not possible to re-convey the property to the loanee on accepting any arrears, is the opinion.

6. This court do not find any legally valid reason to compel the respondent Bank to re-convey the property. The sale was confirmed as early as in the year 2001 and the sale certificate was issued in the year 2004. Learned Standing counsel submitted that many attempts were already made from the side of the 1st petitioner to set aside the same and also to prevent the Bank from exercising power over the property in question. However, this court takes not of the fact that, despite the fact that the sale was confirmed in the year 2001 and the sale certificate was issued on 2004 the

request for re-conveyance was made only in the year 2010. At any rate, unless any competent civil court had set aside the sale, this court in exercise of power vested under Article 226 cannot compel the Bank to re-convey the property to which it has become own much earlier. Therefore W.P (c) No.32366/2011 fails and it is liable to be dismissed.

7. Learned counsel appearing for the petitioner in W.P (c) No.32230/2013 submitted that a civil suit filed by him seeking declaration of title and ownership over the property covered under Ext.P1 is pending disposal and hence the writ petition may be disposed of leaving the parties to agitate the issue before the civil court. Therefore the issue raised in W.P (c) No.32230/2013 is left open for agitation in the civil suit.

8. In the result both these writ petitions are dismissed subject to observations contained herein above.

Sd/-
C.K. ABDUL REHIM
JUDGE

AMG

True copy

P.A. to Judge