

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 11TH DAY OF DECEMBER 2015/20TH AGRAHAYANA, 1937

WP(C).No. 29492 of 2015 (J)

PETITIONER(S):

**SHARAFUDHEEN AGED 53 YEARS
S/O.SHAHUL HAMEED, 'CHITHIRA', MAVELI NAGAR
VAMANAPURAM(P.O), THIRUVANANTHAPURAM DISTRICT.**

BY ADV. SRI.LIJU. M.P

RESPONDENT(S):

- 1. THE GENERAL MANAGER
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK
DISTRICT CO-OPERATIVE BANK OFFICE
THIRUVANANTHAPURAM-695 001.**
- 2. THE BRANCH MANAGER
THIRUVANANTHAPURAM DISTRICT CO-OPERATIVE BANK
VENJARAMOOD BRANCH, VENJARAMOOD(P.O.)
THIRUVANANTHAPURAM DISTRICT.695 001.**

R1& R2 BY ADV. SRI.T.R.HARIKUMAR, SC, TVM DIST.CO.OPBANK

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 11-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

WP(C).No. 29492 of 2015 (J)

APPENDIX

PETITIONER(S)' EXHIBITS

- P1- COPY OF THE SALE DEED NO.3699 OF VAMANAPURAM S.R.O DATED 13.1.1994.
- P2- COPY OF THE JUDGMENT DATED 14.1.2011 IN O.S.NO.11/2006 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, NEDUMANGAD.
- P3- COPY OF THE JUDGMENT IN A.S.NO.166/2011 ON THE FILE OF THE ADDITIONAL DISTRICT COURT-III, THIRUVANANTHAPURAM.
- P4- COPY OF THE PETITION SUBMITTED BY PETITIONER TO THE RESPONDENTS DATED 6.3.2015.
- P5- COPY OF THE ACKNOWLEDGEMENT CARD ADDRESSED TO 1ST RESPONDENT.
- P6- COPY OF THE ACKNOWLEDGEMENT DUE CARD ADDRESSED TO 2ND RESPONDENT.

RESPONDENT(S)' EXHIBITS: N I L

//TRUE COPY//

PA TO JUDGE

JV

P.V.ASHA, J.

W.P.(C) No.29492 of 2015

Dated this the 11th day of December, 2015

JUDGMENT

The grievance of the petitioner is that the 1st respondent Bank is retaining the title deeds with them even after Exts.P2 and P3 judgments, on the ground that the loan is availed after mortgaging of the title deeds. By judgment dated 14.01.2011 in O.S.No.11/2006 the Sub Judge, Nedumangad passed a decree declaring that the equitable mortgage created in respect of the plaint schedule property covered by the title deeds involved in this writ petition is not binding upon the petitioner herein and restraining the Bank by a permanent prohibitory injunction from realization of money due in the account S.No.37/2001-2002. As against that judgment, the Bank filed an appeal as AS No.166/2011 and by Ext.P3 judgment dated 19.02.2014, the appeal was dismissed. Despite the pronouncement of the judgment as early as on 19.02.2014, the petitioner complains that the Bank is retaining the title deeds with them despite his request.

2. A statement has been filed on behalf of the 1st respondent Bank stating that crime No.684/2005 has already been registered pertaining to the transaction by the Venjarumood Police and the matter was investigated and a refer report was filed before the Judicial First Class Magistrate First Class, Nedumangad and the said matter is pending before the learned Magistrate. According to the Bank, the title deeds in respect of the petitioner's property form crucial part of the evidence and therefore, the title deeds cannot be returned.

3. I do not find any justification on the part of the Bank in retaining the title deeds of the petitioner on the ground that the title deeds were utilized for availing loan from the 1st respondent Bank on account of forgery committed by somebody for which the petitioner is not found responsible, as can be seen from the Exts.P2 and P3 judgments. Therefore, there is no justification in claiming retention of the title deeds for the purpose the case said to be pending before the Magistrate Court. It is up to the respondent to seek production of the document as and when necessary if required, through court.

In such circumstances, there shall be a direction to the 1st respondent Bank to return the title deeds to the petitioner within

a period of one month from the date of receipt of a copy of this judgment.

JV

SD/-
P.V. ASHA,
JUDGE