

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 28TH DAY OF OCTOBER 2015/6TH KARTHIKA, 1937

WP(C).No. 29884 of 2015 (I)

PETITIONER(S):

**D.SATHEESAN, AGED 55 YEARS
S/O.DHARMARAJAN, TC 1/626, KODIYIL VEEDU,
NEHRU JUNCTION, KAZHAKKUTOM PO, THIRUVANANTHAPURAM.**

BY ADV. SRI.M.SREEKUMAR

RESPONDENT(S):

- 1. SUNDARAM BNP PARIBAS HOME FINANCE LTD,
REPRESENTED BY ITS MANAGING DIRECTOR, 21,
PATULLOS ROAD, CHENNAI-600 002.**
- 2. AUTHORISED OFFICER,
SUNDARAM BNP PARIBAS HOME FINANCE LTD.,
SUNDARAM TOWERS, 46, WHITES ROAD
CHENNAI-600 014.**
- 3. M.ABDUL HASSAN,
S/O.LATE MUHAMMED MUSTHAFI,
MANAKKATTUVILAKATHU HOUSE, NAMBIARKULAM,
PALLIPPURAM PO, THIRUVANANTHAPURAM,
NOW RESIDING AT HASSAN BROTHERS BUILDING,
NAMBIARKULAM, PALLIPPURAM PO,
THIRUVANANTHAPURAM-695 583.**
- 4. SHINY L.
MANAKKATTUVILAKATHU HOUSE, NAMBIARKULAM,
PALLIPPURAM PO, THIRUVANANTHAPURAM,
NOW RESIDING AT HASSAN BROTHERS BUILDING,
NAMBIARKULAM, PALLIPPURAM PO,
THIRUVANANTHAPURAM-695 583.**

R1,R2 BY ADV. SRI.VARGHESE T. KURIAKOSE

R3,R4 BY ADVS. SRI.RAM MOHAN.G.

SRI.G.P.SHINOD

SRI.MANU V.

SRI.GOVIND PADMANAABHAN

SRI.AJIT G.ANJARLEKAR

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 28-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

- P1 :** TRUE COPY OF SALE DEED NO.430/13 OF SRO, KAZHAKKUTOM
DT 31-1-2013.
- P2 :** TRUE COPY OF AGREEMENT EXECUTED BETWEEN PETITIONER & HIS
BROTHER IN FAVOUR OF 3RD RESPONDENT DT 31-1-2013
- P3 :** TRUE COPY OF THE RELEASE DEED NO.674/14 OF SRO, KAZHAKKUTOM
DATED 7-2-2014.
- P4 :** TRUE COPY OF LEGAL NOTICE DATED 5-3-2013 ISSUED BY THE 1ST
RESPONDENT.
- P5(A) :** TRUE COPY OF THE RECEIPT NO.184906 DT 31-1-2013.
- P5(B) :** TRUE COPY OF THE RECEIPT NO.184908 DT NIL.
- P5(C) :** TRUE COPY OF THE RECEIPT NO.184911 DT 18-3-2013.
- P5(D) :** TRUE COPY OF THE RECEIPT NO.184919 DT 30-3-2013.
- P5(E) :** TRUE COPY OF THE RECEIPT NO.184925 DT 2-5-2013.
- P5(F) :** TRUE COPY OF THE RECEIPT NO.184935 DT 18-6-2013.
- P5(G) :** TRUE COPY OF THE RECEIPT NO.184954 DT 29-7-2013.
- P5(H) :** TRUE COPY OF THE RECEIPT NO.184964 DT 31-8-2013.
- P5(I) :** TRUE COPY OF THE RECEIPT NO.KZK/CRV/900054 DT 17-10-2013
- P6 :** TRUE COPY OF THE RECEIPT DT 17-4-2014 ISSUED BY THE 3RD RESPONDENT.
- P7 :** TRUE COPY OF THE PLAINT IN OS.NO.8/2015 ON THE FILE OF THE SUB
COURT, ATTINGAL DT 29-1-2015 FILED BY 3RD RESPONDENT.
- P8 :** TRUE COPY OF POSSESSION NOTICE DT 7-9-2015 ISSUED BY THE 2ND
RESPONDENT TO THE RESPONDENTS 3 & 4.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C) No.29884 of 2015

Dated this the 28th day of October 2015

JUDGMENT

The petitioner, along with his brother, had purchased a property having an extent of 40.46 Ares comprised in Sy.No.361/2 of Kadinamkulam Village, Thiruvananthapuram Taluk from the 3rd respondent. At the time of purchase of property from the 3rd respondent, the property had been mortgaged by the 3rd respondent with the 1st respondent in connection with a loan taken by the 4th respondent, who is the daughter of the 3rd respondent. In the writ petition, the petitioner is aggrieved by the steps taken by the respondent company against the property purchased by the petitioner for realisation of the outstanding loan amount from the 3rd and 4th respondents. The prayer of the petitioner in the writ petition is to permit the petitioner to pay the defaulted amounts occasioned by the 3rd and 4th respondents to the 1st respondent company, in installments, so as to save the property from the proceedings initiated by the 1st respondent company.

2. I have heard the learned counsel appearing for the

petitioner, the learned Standing counsel on behalf of the 1st and 2nd respondents and the learned counsel appearing for the 3rd and 4th respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar and taking note to the fact that a civil suit in respect of the same property is currently pending before the Sub Court, Attingal (O.S.No.8/2015), I feel that the petitioner in the writ petition can be permitted to discharge the liability to the 1st respondent company for and on behalf of the 3rd and 4th respondents and redeem the mortgage on behalf of the 3rd and 4th respondents. Counsel for the 3rd and 4th respondents has no objection to the said course of action, as long as the title deeds in respect of the property in question are deposited by the 1st respondent company before the Sub Court, Attingal, in the civil suit that is pending before the said Sub Court. It is also his submission that the release of the title deeds should be subject to the condition that the petitioner does not claim any right over the property in question only on account of the fact of redemption of the mortgage in respect of the said item of property. On a consideration of submissions made on both sides, I dispose the writ petition with the following directions:-

i) The total amount outstanding to the 1st respondent company from the 3rd and 4th respondents, is stated to be Rs.78,72,289/- together with accrued interest from 31.10.2015. Accordingly, if the petitioner pays the said amount of Rs.78,72,289/- together with accrued interest from 31.10.2015 in twelve equal and successive monthly installments commencing from 16.11.2015, then the further proceedings for recovery against the property in question shall be kept in abeyance.

ii) On the petitioner complying with the direction above, and paying the entire outstanding amount due to the 1st respondent company, the 1st respondent company shall deposit the title deeds in respect of the property before the Sub Court, Attingal, where O.S.No.8/2015 between the petitioner and the 3rd and 4th respondents is pending. The Sub Court, Attingal, shall, on receipt of the title deeds in respect of the property in question from the 1st respondent company, keep the same in its custody pending disposal of the suit referred to above. The right of the parties over the property will depend upon the outcome of the suit before the Sub Court Attingal.

iii) I make it clear that nothing in this judgment

shall be seen as conferring any right on the petitioner over the property in question solely on account of the fact that he has been permitted to redeem the mortgage with the 1st respondent company.

iv) It is further made clear that if the petitioner commits a default in respect of any of the installments, he will lose the benefit of this judgment and the 1st respondent company will be free to continue the recovery proceedings against him from the stage at which they presently stand.

Sd/-

A.K.JAYASANKARAN NAMBIAR
JUDGE

sm/