

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 30422 of 2014 (C)

PETITIONER :

**SRI.M.ABDUL LATHEEF,AGED 48 YEARS,
S/O.MUHAMMED KUNJU,
RESIDING AT KEELOM THARAYIL,PRIYADARSINI NAGAR,
II MILE STONE, KILIKOLLUR P.O. KOLLAM DISTRICT.**

BY ADV. SRI.SAJU J PANICKER

RESPONDENT(S):

- 1. THE AUTHORIZED OFFICER,
CHIEF MANAGER, STATE BANK OF MYSORE,
KOLLAM BRANCH KOLLAM. PIN-691 001**
- 2. THE SUB REGISTRAR,
KILIKOLLUR SUB REGISTRY OFFICE,
KILIKOLLUR, KOLLAM.**
- 3. THE VILLAGE OFFICER,
KILIKOLLUR VILLAGE, KOLLAM. PIN-691 001**
- 4. MANJU RAJ, D/O.NADARAJAN,
VIJAYA BHAVANAM, ISWARYA NAGAR-21, KILIKOLLUR,
KOLLAM-15**
- 5. M/S. AMRUTHA HARDWARES AND PAINTS,
REPRESENTED BY ITS PROPRIETOR,SUNIL KUMAR J.,
KUNNUMVILA KIZHAKKATHIL, MANGAD,
KOLLAM. PIN-691 001**
- 6. REVATHY MURALI,
D/O.MURALEEDHARAN, THEKKEVEENASSERIL,
HOUSE NO.361, WARD NO.V, MANGAD P.O, MANGAD,
KOLLAM. PIN-691 001**
- 7. ASHOKAN, S/O.SADANANDAN,
KALLUVILA THEKKETHIL, HOUSE NO.445, WARD NO.V,
MANGAD P.O, MANGAD, KOLLAM.PIN-691 001**
- 8. SUNIL, LAKSHMI NIVAS, KARICODE, KOLLAM-691 001**

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9. MURALEEDHARAN,
THEKKEVEENASSERIL, HOUSE NO.361, WARD NO.V,
MANGAD P.O. MANGAD, KOLLAM. PIN-691 001
10. LATHA, W/O.ASHOKAN,
S/O.SADANANDAN, KALLUVILA THEKKETHIL,
HOUSE NO.445, WARD NO.V, MANGAD P.O, MANGAD,
KOLLAM. PIN-691 001
11. SINDU, D/O.KAMALAMMA,
SINDHU BHAVAN, HOUSE NO.XI/226, WARD NO.XI,
THATTARKONAM P.O, KOTTAMKKARA VILLAGE,
KOLLAM. PIN-691 001

R1 BY ADV. SRI.LAL GEORGE, SC, STATE BANK OF MYSORE
R2 & R3 BY GOVERNMENT PLEADER SMT. K.T.LILLY
R4 BY ADV. SRI.K.SHAJ
SRI.SAJJU.S
R6,R7,R9,R10 & R11 BY ADV. SRI.R.MOHANA BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

sts

WP(C).No. 30422 of 2014 (C)

APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 - THE TRUE COPY OF THE LETTER OF DEPOSIT OF TITLE DEEDS
DATED 17-08-2011 AND 13-09-2011**
- EXT.P2 - THE TRUE COPY OF THE POSSESSION NOTICE DATED 3-07-2014
ISSUED BY THE 1ST RESPONDENT BANK**
- EXT.P3 - THE TRUE COPY OF THE SALE CERTIFICATE DATED 26-08-2014**
- EXT.P4 - THE TRUE COPY OF THE ENCUMBRANCE CERTIFICATE IN RESPECT
OF THE PROPERTY PURCHASED IN AUCTION.**

RESPONDENT(S)' EXHIBITS

- EXT.R6(A)- THE TRUE COPY OF THE AUCTION NOTICE PUBLISHED BY 1ST
RESPONDENT IN MATHURBHUMY DAILY DATED 04/11/2011.**

/TRUE COPY/

P.A.TO JUDGE

sts

A.K.JAYASANKARAN NAMBIAR, J.

.....
W.P.(C).No.30422 of 2015

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Dated this the 27th day of October, 2015

J U D G M E N T

The petitioner is an auction purchaser of property that was mortgaged by the 5th respondent to the 1st respondent bank as security for a loan availed by the 5th respondent from the 1st respondent. It is stated that, the 1st respondent bank had taken possession of the secured asset, and thereafter, conducted a sale in accordance with a the provisions of the Security Interest Enforcement Rules, 2002, and the petitioner had purchased the property in the auction that was conducted by the 1st respondent. The grievance of the petitioner in the writ petition is essentially that, when the petitioner approached the 2nd respondent for registration of the sale certificate, and to take an encumbrance certificate of the property, it was found that there were four attachments in respect of the property, all subsequent to the mortgage executed in favour of the 1st respondent, that were entered in the encumbrance register. In the writ petition, it is the case of the petitioner that, the said encumbrances ought to effaced and the sale certificate issued in favour of the petitioner be taken note of by the registering authorities by making appropriate entries in the registers maintained by them under the Registration Act.

I have heard the learned counsel for the petitioner and the learned Standing counsel for the 1st respondent bank and the learned Government Pleader for the official respondents.

On a consideration of the facts and circumstances of the case and the submissions made across the bar, I find that, inasmuch as the petitioner had purchased the property in question in proceedings under the Security Interest Enforcement Rules, 2002, the sale certificate issued in favour of the petitioner would necessarily have to be taken note of by the registering authorities under the Registration Act and appropriate entries made in the registers maintained under the said Act, so as to put persons subsequently dealing in the property, on notice of such sale in favour of the petitioner. I also note that by virtue of the decision of this court in **Madhan v. Sub Registrar [2014 (1) KLT 406]**, the entries pertaining to attachments at the instance of civil court, subsequent to the creation of a mortgage in respect of the property, cannot be retained in the encumbrance register pertaining to the property in question. Accordingly, while disposing the writ petition, I direct the 2nd respondent to efface the attachments effected subsequent to the creation of the mortgage in respect of the property in favour of the 1st respondent, and also make entries in the appropriate registers, noting the factum of the sale certificate being issued in favour of the petitioner by the 1st

respondent in proceedings under the Security Interest Enforcement Rules, 2002. The 2nd respondent shall comply with the aforesaid direction within a period of three weeks from the date of receipt of a copy of this judgment, as well as the Sale Certificate from the petitioner. The petitioner is directed to produce the necessary stamp papers before the Recovery Officer of the 1st respondent so that the sale certificate issued to him can be executed in stamp paper. It is clarified that the direction issued to the 2nd respondent in this judgment shall apply only as and when the petitioner produces the sale certificate executed in stamp paper before the 2nd respondent.

A.K.JAYASANKARAN NAMBIAR
JUDGE

