

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 18TH DAY OF JUNE 2015/28TH JYAISHTA, 1937

WP(C).No. 32199 of 2014 (Y)

PETITIONER(S):

**SUNIL PHILIP, AGED 41 YEARS,
SON OF BABY PHILIP, PUTHENVEETIL, CHEPPAD P.O.
ALAPPUZHA DISTRICT, PIN - 690 507.**

**BY ADVS.SRI.A.V.THOMAS (SR).
SMT.M.M.JASMIN
SRI.NIDHI SAM JOHNS**

RESPONDENT(S):

- 1. SUB REGISTRAR,
CHEPPAD, ALAPPUZHA DISTRICT, PIN - 690 507.**
- 2. THE VILLAGE OFFICE,
CHEPPAD, ALAPPUZHA DISTRICT, PIN - 690 507.**
- 3. THE RECOVERY OFFICER,
DEBTS RECOVERY TRIBUNAL, 5TH FLOOR
KHSB OFFICE COMPLEX, PANAMPILLY NAGAR, ERNAKULAM
KOCHI - 682 036.**
- 4. THE FEDERAL BANK LTD,
MAVELIKKARA BRANCH, ALAPPUZHA DISTRICT, PIN - 690 101
REPRESENTED BY ITS MANAGER.**
- 5. VARGHESE IDUCULLA,
SON OF M.O.IDUCULLA, KATTARAM VEETIL, MUTTOM P.O.
HARIPAD, ALAPPUZHA DISTRICT, PIN - 690 511.**
- 6. VALSAMMA SAMUEL,
DAUGHTER OF M.O.IDUCULA, VAZHAYIL PALLATH SREYAS,
VENMANI P.O., ALAPPUZHA DISTRICT, PIN - 689 509.**
- 7. KRISHNA PILLAI,
SON OF PARAMU PILLAI, PUTHIYAKAVU, MAVELIKKARA P.O.
ALAPPUZHA DISTRICT, PIN - 690 101.**

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8. THANKAPPAN PILLAI,
S/O.PARAMU PILLAI, HARI BHAVANAM, PUTHIYAKAVU
MAVELIKKARA P.O., ALAPPUZHA, PIN - 690 101.
 9. SREEDHARAN NAIR,
KOTTAYKKATTU THEKKETHIL, PARIMANAM, MUTTOM P.O.
HARIPAD, PIN - 690 511.
 10. K.IQBAL,
KABEER MANSIL, LEJNETH WARD, ALAPPUZHA P.O.
PIN - 688 001.
 11. MULAMOOTTIL LEASING AND HIRE PURCHASE LTD,
REPRESENTED BY ITS MANAGING DIRECTOR, JACOB THOMAS,
MULAMOOTTIL HOUSE, KOZHENCHERRY, PIN - 680 641.
 12. JACOB THOMAS,
MULAMOOTTIL HOUSE, KOZHENCHERRY, PIN - 689 641.
 13. CENTURION BANK OF PUNJAB LTD (NOW HDFC)
CHETTIKULANGARA P.O., ALAPPUZHA DISTRICT,
PIN - 690 106.
- R1-3 BY GOVERNMENT PLEADER SMT.M.T.SHEEBA
R4 BY ADVS. SMT.SALI. P. MATHEW (MUNNAR)
SRI.GEORGE VARGHESE (MANACHIRACKEL)
R13 BY ADV. SRI.T.RAJESH, SC, HDFC BANK LTD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18-06-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1:** TRUE COPY OF THE ACKNOWLEDGEMENT OF DEPOSIT OF TITLE DEEDS DATED 07/08/1998 EXECUTED BY M.O.IDICULA AND MARIAMMA IDICULA, IN FAVOUR OF FEDERAL BANK LTD.
- EXHIBIT P2:** TRUE COPY OF THE ACKNOWLEDGMENT OF DEPOSIT OF TITLE DEEDS DATED 22/04/2000 EXECUTED BY THE 5TH RESPONDENT ALONG WITH M.O.IDICULA AND MARIAMMA IDICULA, IN FAVOUR OF FEDERAL BANK LTD.
- EXHIBIT P3:** TRUE COPY OF THE FINAL ORDER DATED 12/10/2004 IN O.A.NO. 67/2004 PASSED BY THE DEBTS RECOVERY TRIBUNAL, ERNAKULAM.
- EXHIBIT P4:** TRUE COPY OF THE SALE CERTIFICATE DATED 31/05/2010 EXECUTED BY THE RECOVERY OFFICER, DEBT RECOVERY TRIBUNAL, ERNAKULAM, IN FAVOUR OF THE PETITIONER.
- EXHIBIT P5:** TRUE COPY OF THE ORDER OF DELIVERY DATED 16/06/2010 ISSUED BY THE RECOVERY OFFICER, DEBT RECOVERY TRIBUNAL, ERNAKULAM, TO THE PETITIONER.
- EXHIBIT P6:** TRUE COPY OF THE POSSESSION CERTIFICATE NO. 8467610 DATED 09/10/2014 ISSUED BY THE VILLAGE OFFICER, CHEPPAD.
- EXHIBIT P7:** TRUE COPY OF THE ENCUMBRANCE CERTIFICATE NO. 3709/2014 DATED 20/11/2014 FROM 01/11/1999 TO 17/11/2014 ISSUED BY THE SUB REGISTRY OFFICE, CHEPPAD.

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

A.MUHAMED MUSTAQUE, J.

W.P.(C).No.32199/2014
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Dated this the 18<sup>th</sup> Day of June, 2015

**J U D G M E N T**

This writ petition is filed by an auction purchaser of the property from the Debts Recovery Tribunal.

2. Petitioner is aggrieved by the entries relating to the attachment made in the records maintained by the Sub Registrar based on the orders of the civil court. It is seen that several attachments have been effected over the property. All these attachments as seen from the records are after the mortgage. The mortgage is created in the year 1998. Therefore, any contractual obligation created under the mortgage will prevail over the attachment. The petitioner's case is that these entries have to be removed in view of the law declared by this court in **Madhan v. Sub Registrar [2014 (1) KLT 406]**. I am also in agreement with the proposition of law as propounded in **Madhan's** case. But if the court

orders attachment, necessarily, that has to be lifted by the court which passed such order . What is reflected in the records are only ministerial acts done by the registering authority, showing the details of the attachments. Therefore, I am of the view that all the entries shall be removed consequent upon any order to be passed by the civil court.

3. Accordingly, the following directions are issued:

i. The Munsiff's Court, Haripad , Sub Court, Mavelikkara, Sub Court, Kollam, Munsiff's Court, Pathanamthitta, Sub Court, Alleppey shall pass appropriate orders in this matter in the light of the judgment of this court in **Madhan's case** (supra) . The order as above shall be passed within four weeks from the date of moving such application by the petitioner.

ii. It is to be noted that in this case though notices were issued to the persons who obtained orders of attachment from the civil court, none of them appeared before this Court. Based on the orders passed by the civil court, necessary entries shall be effaced in accordance with that directions. The civil court shall also communicate the order, once order is lifted, to the Sub Registrar.

The Writ Petition is disposed of as above. No costs.

**Sd/-**

**A.MUHAMED MUSTAQUE, JUDGE**