IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

FRIDAY, THE 2ND DAY OF AUGUST 2024 / 11TH SRAVANA, 1946

WP(C) NO. 33311 OF 2023

PETITIONERS:

1 JINU MATHEW
AGED 46 YEARS, SON OF K M MATHEW,
KUZHIVELIL VEEDU, PERUMPRAMAVU P. O.,
KEEZHAVAIPUR MURI, MALLAPPALLY VILLAGE,
MALLAPPALLY TALUK, PATHANAMTHITTA,
KERALA, PIN – 689587.

2 K. M. MATHEW,
AGED 78 YEARS,
SON OF K. T. MATHAI, KUZHIVELIL, PERUMPRAMAVU P. O.,
KEEZHVAIPUR MURI, MALLAPPALLY VILLAGE,
MALLAPPALLY TALUK, PATHANAMTHITTA,
KERALA, PIN – 689587.

BY ADVS.
SRI. V. JOHN MANI
SRI. VARGHESE SABU
SMT. SETHULAKSHMI K. K.
SMT. SHAMEENA K. Y.

RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY SECRETARY,
DEPARTMENT OF FINANCIAL SERVICES, MINISTRY OF FINANCES,
3 RD FLOOR, JEEVAN DEEP BUILDING, SUNSAD MARG,
NEW DELHI, PIN – 110001.

2 M/S. FEDERAL BANK LTD.,
REPRESENTED BY ITS AUTHORISED OFFICER, FEDERAL TOWERS,
MARKET RD, PERIYAR NAGAR, ALUVA, KERALA, PIN – 683101.

3 FEDERAL BANK LTD.,
REPRESENTED BY ITS MANAGER, BROADWAY BRANCH,
CATHOLIC CENTRE, KOCHI, PIN – 682031.

4 EDELWEISS ASSET RECONSTRUCTION COMPANY LIMITED,
REPRESENTED BY ITS AUTHORISED OFFICER,
EDELWEISS OFF CST ROAD, KALINA, MUMBAI, PIN – 400098.

**5 M/S. KUZHUVELIL EXPORTS & IMPORTS.
18/1553, PALLICHAL ROAD, KOCHI,
REPRESENTED BY MANAGING PARTNER SRI.THOMAS MATHEW,
SON OF LATE K T MATHAI, KUZHUVELIL HOUSE,
PERUMBERAMMAVU, MALLAPPALLY,
PATHANAMTHITTA, PIN – 682025.**

**6 THOMAS MATHEW,
SON OF LATE K T MATHAI, MANAGING PARTNER,
M/S KUZHUVELIL EXPORTS & IMPORTS,
KUZHUVELIL HOUSE, PERUMBERAMMAVU, MALLAPPALLY,
PATHANAMTHITTA, NOW RESIDING AT FLAT 104,
RUNWAL GRAND BUILDING, ABOVE DHANLAKSHMI BANK,
AMBEDKAR GARDEN-18TH ROAD, CHEMBUR, MUMBAI,
MAHARASHTRA, PIN – 400071.**

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 02.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

DINESH KUMAR SINGH, J.

W.P.(C) No. 33311 of 2023

Dated this the 2nd day of August, 2024

JUDGMENT

1. The present writ petition has been filed by the petitioner seeking a writ of mandamus commanding the respondent Bank not to dispose or alienate petitioners' property admeasuring 58.30 Ares in Resurvey No. 212/13 of Mallappally Village in satisfaction of the debt allegedly due from the respondents 5 and 6 under the provisions of the SARFAESI Act. The 2nd petitioner is the brother of the 5th respondent. The 6th respondent had created equitable mortgage of the said property in favour of the respondent Bank to obtain the loan.

2. The 6th respondent's name got mutated in the said property in view of the partition deed. The land was taken on the basis of the registered partition deed No. 1783 of 2005 executed and registered in the year 2005. The petitioner has filed the Civil Suit, O.S. No. 226 of 2022 to declare the partition deed executed in the year 2005 as null and void. The learned Munsiff's Court, Thiruvalla passed Judgment and Decree dated 10.11.2022 and declared the partition deed dated 28.10.2005 as null and void. On the strength of this

decree obtained by the petitioners in the suit filed after seventeen years, now the petitioner resorts his right that the property in question should not be alienated by the respondent Bank to satisfy its dues.

3. I find no substance in this writ petition. It is nothing but, a gross abuse of the process of the Court and law. The partition deed of the year 2005 came to be declared null and void in the year 2022 in a suit that was filed in the year 2022. In view thereof, the present writ petition is hereby dismissed.

Sd/-
DINESH KUMAR SINGH
JUDGE

Svn

APPENDIX OF WP(C) 33311/2023

PETITIONERS' EXHIBITS

EXHIBIT P.1	**A TRUE COPY OF THE WILL NO. 47/1984 DATED 04/09/1984 OF MALLAPPALLY SRO ALONG WITH ITS TRUE TRANSLATION**
EXHIBIT P2	**A TRUE COPY OF THE PARTITION DEED NO. 1783 OF 2005 OF MALLAPPALLY SRO ON 28/10/2005**
EXHIBITP3	**A TRUE COPY OF THE LETTER NO. 164/22 DATED 25/04/2022 OF THE VILLAGE OFFICER, MALLAPPALLY**
EXHIBIT P.4	**A TRUE COPY OF THE REPLY ISSUED BY SUB REGISTRAR'S OFFICE DATED 25/04/2022**
EXHIBIT P.5	**A TRUE COPY OF THE JUDGEMENT IN OS NO. 226 OF 2022 BEFORE THE HON'BLE MUNSIFF'S COURT, THIRUVALLA DATED 10/11/2022**
EXHIBIT P.6	**A TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE VILLAGE OFFICE, MALLAPPALLY DATED 06/04/2023**
EXHIBIT P.6 (A)	**A TRUE COPY OF THE LAND TAX RECEIPT ISSUED BY THE VILLAGE OFFICE, MALLAPPALLY DATED 13/03/2023**
EXHIBIT P.7	**A TRUE COPY OF THE ENCUMBRANCE CERTIFICATE DATED 17/08/2023 ISSUED BY THE SUB REGISTRAR'S OFFICE, MALLAPPALLY**
EXHIBIT P 8	**A TRUE COPY OF THE MEMORANDUM OF ORIGINAL APPLICATION NO. 54 OF 2019 PENDING BEFORE THE HON'BLE DEBT RECOVERY TRIBUNAL- I, ERNAKULAM WITHOUT ITS ANNEXURES.**
EXHIBIT P. 8 (A)	**A TRUE COPY OF THE PROCEEDINGS OF THE HON'BLE DEBT RECOVERY TRIBUNAL- I, ERNAKULAM IN OA NO. 54 OF 2019 DATED 08/03/2021**

EXHIBIT P.9	**A TRUE COPY OF THE IA NO. 3195 OF 2023 IN OA NO. 54 OF 2019 PENDING BEFORE THE HON'BLE DEBT RECOVERY TRIBUNAL- I, ERNAKULAM WITHOUT ITS ANNEXURES**
EXHIBIT P.10	**A TRUE COPY OF THE REPRESENTATION DATED 25/09/2023 ISSUED BY THE PETITIONERS TO 2ND RESPONDENT**
EXHIBIT P.11	**A TRUE COPY OF THE REPRESENTATION DATED 25/09/2023 ISSUED BY THE PETITIONERS TO 3RD RESPONDENT**
EXHIBIT P.12	**A TRUE COPY OF THE REPRESENTATION DATED 25/09/2023 ISSUED BY THE PETITIONERS TO 4TH RESPONDENT**