



2025:KER:31505

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS
TUESDAY, THE 8TH DAY OF APRIL 2025 / 18TH CHAITHRA, 1947
WP(C) NO. 11247 OF 2024

PETITIONERS:

- 1 SHEELA FRANCIS PARAKKAL
AGED 64 YEARS
W/O LATE FRANCIS PARAKKAL,
PARAKKAL HOUSE, ASSISILANE,
ALUVA, PIN - 683101**
- 2 DEEPAK FRANCIS PARAKKAL
AGED 47 YEARS
S/O LATE FRANCIS PARAKKAL,
PARAKKAL (H), ASSISSILANE,
ALUVA, PIN - 683101**
- 3 RUPAK FRANCIS PARAKKAL
AGED 44 YEARS
S/O LATE FRANCIS PARAKKAL 2C,
NOEL ECOTAT, VALLATHOL JUNCTION
TRIKKAKKARA, PIN - 682021**

BY ADV PRAVEEN K. JOY

RESPONDENTS:

- 1 THE AUTHORISED OFFICER
SOUTH INDIAN BANK BUILDING NO.11
THRIGGAYA AVENUE PRIYADHARSINI ROAD
ALUVA, PIN - 683101**
- 2 THE BRANCH MANAGER
SOUTH INDIAN BANK
ALUVA BRANCH, PIN - 683101**
- 3 THE GENERAL MANAGER
RESERVE BANK OF INDIA BAKERY JUNCTION
P.B NO.6507 THIRUVANANTHAPURAM, PIN - 695033**



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**4* HDB FINANCIAL SERVICES LTD.,
2ND FLOOR, DOOR NO.37/1912, JK CHAITHANYA
BUILDINGS, OPPOSITE SWAPNIL APARTMENT,
KALOOR, KADAVANTHRA ROAD,
KADAVANTHRA, COCHIN-682017
REP BY ITS MANAGER
*[ADDL.R4 IS IMPEADED AS PER ORDER DATED
07.01.2025 IN I.A.01/2024 IN WP(C)11247/2024**

**BY ADVS.
SUNIL SHANKAR A
VIDYA GANGADHARAN(K/000424/2020)
P.PAULCHAN ANTONY
SREEJITH K.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 08.04.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



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BECHU KURIAN THOMAS, J.

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Dated this the 8th day of April, 2025

JUDGMENT

Petitioners seek for a direction to release their title deeds and also for a declaration that the second respondent has no authority to retain petitioners' original title deeds, despite closure of the loan account. Petitioners have also sought for a compensation of Rs.10,00,000/- for illegal retention of documents for nine years after closure of the loan.

2. The first petitioner and her husband had availed a loan from the second respondent in the year 2009. Second and third petitioners who are their children, were the guarantors to the said loan. Husband of the first petitioner expired on 20.10.2011. Petitioners are the legal heirs, as is evident from the legal heirship certificate dated 20.3.2013.

3. On 16.07.2015, the bank issued Exhibit-P4 letter acknowledging the deposit of four title deeds by the petitioners as security for the housing loan availed from them. The document which included two exchange deeds bearing Nos. 1924/1992 and 2039/1992, a release deed No.1350/1975 and a sale deed No.3625/1971 all of Aluva Sub Registry Office, were retained by the second respondent bank. Subsequently, on 04.08.2015, as per Exhibit-P5, petitioners



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requested the second respondent to close the loan account and release the collateral securities mortgaged with the bank, after remitting Rs.58,01,320/-. According to the petitioners, after crediting the cheque issued by them, the bank closed the loan account on 05.08.2015. The statement of accounts is produced as proof of closure of the loan. However, despite closure of the loan account, the title deeds relating to the property mortgaged, were not returned. Though several letters were issued, the bank did not return the original title deeds. Petitioners contend that refusal to release the original title deeds, even after closure of the loan account is illegal and the unilateral action of the bank in withholding the security documents, after closure is arbitrary. Hence, they have approached this Court seeking the reliefs mentioned earlier.

4. A counter affidavit has been filed by the Chief Manager of the second respondent stating that the writ petition is not maintainable and that they are not amenable to the writ jurisdiction of the court. It is further stated that the loan availed by the first petitioner and her husband was secured by equitable mortgage which was also a general security for a cash credit limit availed by M/s. Parackel Cartel who had enhanced the cash credit limit by deposit of title deeds on 09.07.2010 and the credit limit was closed and later the title deeds of the properties mortgaged by M/s. Parackel Cartel was released. It is also pleaded by the second respondent that the housing loan availed by the



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petitioners was closed on 05.08.2015 following take over by HDB Financial Services and on receipt of Exhibit-P8 request, a detailed examination was conducted at the branch which revealed that no files or documents were available there. Despite a detailed search to rule out the possibility of any misplacement, the title deeds could not be traced out. It was also stated that the second respondent branch had moved to a new premises in July 2023 and many closed files were disposed of during the shifting process. The second respondent asserted that the title deeds of the petitioners were not retained or withheld at any point in time since there were no pending dues and they are not retaining the documents. It was also stated that the documents requested by Exhibit-P8 letter have not been able to be traced out. In spite of the above pleading, second respondent asserted that when a financial institution takes over a loan facility they normally demand the original title deeds be released from the earlier institution and be deposited with them. According to the respondents, it is unbelievable that the HDB Financial Services who took over the loan would have waited more than 8 years to submit the original title deeds and that the petitioners have not disclosed the entire details. It is also stated that second respondent has not retained the original title deeds for any other amounts due from the petitioners and the reliefs sought for are not liable to be granted.

5. Since during the course of arguments, it was suggested on



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behalf of the second respondent that there is a possibility that HDB Financial Services who had taken over the home loan of the petitioners in 2015, may have collected the original documents of title and be retaining it, petitioner impleaded the said institution as additional respondent No. 4. In the counter affidavit filed by respondent No.4, it was categorically stated that based on the deeds mentioned in the mortgages it was evident that the property mortgaged with the second respondent was distinct from the property mortgaged with respondent No.4.

6. I have heard Sri. Praveen K. Joy learned counsel for the petitioner as well as Sri. Sunil Shankar learned standing counsel for respondents 1 to 3 as well as Sri. Poulochan Antony learned counsel for the 4th respondent.

7. Petitioners have been attempting to obtain their original four title deeds over which equitable mortgage by deposit of title deeds was created with the second respondent. Exhibit-P4 acknowledged the existence of those title deeds with the second respondent as on 16.07.2015. There is no document evidencing return of the title deeds. Hence, the second respondent is bound to answer the whereabouts of the title deeds.

8. In the counter affidavit filed by the second respondent as well as during the course of hearing, a vain attempt was made to convey that the home loan having been taken over by the fourth



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respondent, even the title deeds would have been handed over to the said respondent. Thereupon, the fourth respondent was impleaded and in their affidavit they have asserted that the loan availed from the fourth respondent was covered by mortgage of some other properties and not the property covered by the documents submitted to the second respondent. Therefore, the responsibility for return of the documents of title of the petitioners vests with the second respondent.

9. The counter affidavit filed by the second respondent reveals that despite their search, they have not been able to trace the four title deeds. It is quite evident that the documents of title of the petitioners have been lost from the second respondent. Since the documents have not been traced, and the obligation is upon the second respondent to return the title deeds, it is necessary that they return the documents or initiate appropriate proceedings to enable the petitioners to obtain a certified copy of the documents as a replacement for the original title deeds.

10. In a Circular dated 13.09.2023 issued by the Reserve Bank of India, bearing No. DOR.MCS.REC.38/01.01.001/2023-24, it has been specifically mentioned that, in case of delay in releasing original documents of title, the bank shall compensate the borrower at the rate of Rs.5,000/- for each day of delay. It was also clarified that the compensation provided as per the said direction shall be without prejudice to the right of the borrower to get any other compensation as



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per the applicable law.

11. Petitioners have claimed compensation of Rs.10,00,000/- payable by the second respondent. It is evident that the documents of title have been retained without authority from the date of closure of the loan account. Petitioners had requested by Exhibit-P5 communication dated 04.08.2015 to release the respective collateral securities mortgaged. Therefore, the obligation was upon the second respondent to return the documents. Till date the documents have not been returned. Obviously the Reserve Bank's Circular applies in all its rigour to the second respondent. There is no reason to assume that the second respondent will ignore the binding directions of the Reserve Bank of India.

12. As far as the relief of compensation is concerned, it is for the petitioners to initiate proceedings in accordance with law, before the appropriate forum if the second respondent refuses to abide by the RBI Circular. However, the public law remedy under Article 226 of the Constitution of India cannot be resorted to by the petitioners for claiming compensation in a matter of this nature, as the petitioners have efficacious remedy before other forums. Further, this is not a case of violation of any fundamental right of the petitioners for exercising the power to grant compensation under Article 226 of the Constitution of India. Therefore, for the purpose of the claim for compensation raised in this writ petition, the petitioners ought to initiate appropriate other



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remedies.

13. Taking into consideration the non availability of the original four documents of title of the petitioners, a direction to release the title documents, as prayed cannot be issued. A direction incapable of compliance cannot be issued under Article 226 of the Constitution. Notwithstanding the above, it has to be declared that the second respondent has no authority to retain the original title deeds of the petitioner after closure of a loan account.

14. However, considering the conduct of the second respondent and the tone and tenor of the affidavit filed, coupled with the stance adopted, this Court is of the view that, respondents 1 to 3 are bound to pay costs, for the judicial time wasted by them while trying to divert their burden to another establishment, who had to be subsequently impleaded and be called upon to attend this Court.

In the result:

- i. There will be a declaration that the second respondent has no authority to retain the original title deeds of the petitioner after closure of a loan account.*
- ii. The direction to release the title documents belonging to the petitioners is declined due to non-availability of the documents.*
- iii. The claim for compensation raised in this writ petition is declined reserving the right of the petitioners to approach*



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appropriate other forum.

iv. An amount of Rs.50,000/- is imposed as costs on the second respondent of which Rs.25,000/- shall be paid to the petitioners and the balance Rs.25,000/- shall be paid to the Kerala Legal Services Authority. The costs shall be paid within 15 days from the date of receipt of a copy of this judgment. It is clarified that, these costs shall not be set off against the compensation, if any, claimed by the petitioner.

Writ petition is disposed of as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

Jka/08.04.2025.



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APPENDIX OF WP(C) 11247/2024

PETITIONERS' EXHIBITS

Exhibit P1	TRUE COPY OF THE PHOTO OF SANCTION/RENEWAL OF CREDIT FACILITY DATED 26.06.2009 OF SOUTH INDIAN BANK
Exhibit P2	TRUE COPY OF THE DEATH CERTIFICATE ISSUED ON 27.10.2011 BY REGISTRAR OF BIRTH AND DEATH, MUNICIPAL OFFICE ANAGAMALLY
Exhibit P3	TRUE COPY OF THE LEGAL HEIRSHIP CERTIFICATE DATED 20.03.2013 OF TAHSAILDAR ALUVA
Exhibit P4	TRUE COPY OF THE LETTER DATED 16.07.2015 ISSUED BY 2ND RESPONDENT
Exhibit P5	TRUE COPY OF THE REQUEST DATED 04.08.2015 TO THE 2ND RESPONDENT
Exhibit P6	TRUE COPY OF THE CHEQUE DATED 01.08.2015 TOGETHER WITH MAIL OF HDFC BANK
Exhibit P7	TRUE COPY OF THE STATEMENT OF ACCOUNT DATED ON 07.08.2015 ISSUED BY 2ND RESPONDENT
Exhibit P8	TRUE COPY OF REQUEST DATED 01.03.2024 BEFORE THE 2ND RESPONDENT
Exhibit P9	TRUE COPY OF THE ACKNOWLEDGMENT CARD OF THE 2ND RESPONDENT DATED 05.03.2024
Exhibit P10	TRUE COPY OF THE JUDGMENT IN WPC NO. 4806/2023 DATED 17.03.2023