



2025:KER:610

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 7TH DAY OF JANUARY 2025 / 17TH POUSHA, 1946

WP(C) NO. 31197 OF 2024

PETITIONERS:

- 1 YAMUNA KUMARI
AGED 35 YEARS
W/O VIPIN DEV, SREEBHADRA BHAVAN,
PANNIKALA, MEENANKAL P.O, ARYANAD,
MEENANKAL, THIRUVANANTHAPURAM., PIN - 695542
- 2 ASWATHY
AGED 26 YEARS
W/O RATHEESH, PARAYAM VILAKATHU VEEDU,
CHERUPRA, KATTAKADA P.O,
KULATHUMMAL VILLAGE., PIN - 695572

BY ADV M.HEMALATHA

RESPONDENTS:

- 1 THE SUB REGISTRAR
SUB REGISTRAR OFFICE, KATTAKADA,
THIRUVANANTHAPURAM, PIN - 695572
- 2 STATE BANK OF INDIA
KULATHUMMAL BRANCH, KATTAKKADA,
THIRUVANANTHAPURAM, REPRESENTED BY BRANCH
MANAGER., PIN - 695572

BY ADV R.S.KALKURA - STANDING COUNSEL
VIDYA KURIAKOSE - GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 07.01.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



“C.R”

JUDGMENT**Dated this the 7th day of January 2025**

The writ petition is filed to declare that Ext.P1 sale deed is a valid document and to direct the second respondent to grant a housing loan to the second petitioner.

2. The first petitioner was married to Vipin Dev, who died on 5.10.2024. They have a son born in their wedlock. The first petitioner's husband owned 3.73 cents of property in Veeranakavu Village in Kattakada Taluk. After his death, the property devolved on the first petitioner, her minor son and the parents of the deceased. The first petitioner is taking care of her son's paramount welfare. The first petitioner was highly indebted. Therefore, she and the other legal heirs of her deceased husband sold the property to the second petitioner by Ext.P1 sale deed. The second petitioner approached the second respondent bank to obtain a



housing loan to construct a house in the property purchased by Ext.P1 sale deed. The second respondent has demanded the second petitioner to obtain a declaration from the court that the Ext.P1 sale deed is valid because the minor's interest is involved in the property. Ext.P2 sale deed has been executed for the minor's benefit. There is no embargo for the second respondent to grant a loan in favour of the second petitioner. The action of the second respondent is arbitrary. Hence, the writ petition.

3. Heard: Smt. M. Hemalatha, the learned counsel for the petitioners; Smt. Vidya Kuriakose, the learned Government; and Sri. R.S. Kalkura, the learned Standing Counsel for the second respondent.

4. A reading of the pleadings and reliefs in the writ petition reveals that the petitioners want an ex post facto declaration that the Ext.P1 sale deed is a valid document.

5. The first petitioner and her minor son are



Hindus by religion. Therefore, they are governed by the provisions of the Hindu Minority and Guardianship Act, 1956 ('Act', in short).

6. Section 8 (2) of the Act mandates that a natural guardian shall not sell a minor's immovable property without the previous permission of the District Court.

7. Admittedly, it is without obtaining permission from the Court that the first petitioner, along with the other legal heirs of her deceased husband, sold the minor's share in the above property to the 2nd petitioner. As per Section 8 (3) of the Act, any sale made in contravention of the provisions of the Act is voidable at the instance of the minor child.

8. It was in the above backdrop that the second respondent Bank has insisted on a declaration from the Court to sanction the loan in favour of the second petitioner.

9. There is no doubt that it is the prerogative and discretion of the second respondent bank to sanction



loans as per their regulations and guidelines. The insistence of the second respondent for a declaration from the Court is not arbitrary or unreasonable, especially in view of the above-cited provisions of the Act and that the minor's share in the property was sold without previous permission from the Court. In any given case, the dispute projected in the writ petition is within the realm of private law remedy and there is no infraction of any public duty on the part of the second respondent.

10. In **K.K.Saksena v. International Commission on Irrigation and Drainage** [(2015) 4 SCC 670], the Honourable Supreme Court drew a distinction between public law vis - a - vis private law obligations of the State and public authorities, as below:

"43. What follows from a minute and careful reading of the aforesaid judgments of this Court is that if a person or authority is a "State" within the meaning of Art.12 of the Constitution, admittedly a writ petition under Art.226 would lie against such a person or body. However, we may add that even in such cases writ would not lie to enforce private law rights. There are a catena of judgments on this aspect and it is not necessary to refer to those judgments as that is the basic principle of judicial review of an action under the administrative law. The reason is obvious. A private law is that part of a



legal system which is a part of common law that involves relationships between individuals, such as law of contract or torts. Therefore, even if writ petition would be maintainable against an authority, which is "State" under Art.12 of the Constitution, before issuing any writ, particularly writ of mandamus, the Court has to satisfy that action of such an authority, which is challenged, is in the domain of public law as distinguished from private law."

11. It is trite; writ proceedings are not a remedy for enforcing contractual obligations. An aggrieved party must approach the court of competent jurisdiction for appropriate relief for breach of a contract. No doubt, the existence of an alternate remedy does not bar the jurisdiction of this Court to issue a writ but ordinarily, that would be a good ground to refuse to exercise its discretion under Art.226 as disputed questions or rival claims of the parties with regard to breach of a contract are required to be determined on the basis of evidence led before an appropriate forum and not by issuance of writs. (Refer to State of Bihar v. Jain Plastics and Chemicals Ltd [(2002) 1 SCC 216])

12. It is also well settled in **Federal Bank Ltd. v. Sagar Thomas** [(2003) 10 SCC 733] by the Honourable Supreme Court that merely because the Reserve Bank of



India has laid down the banking policy in the interest of the banking system and the interest of monetary stability or sound economic growth having due regard to the interests of the depositors, that does not mean that the private companies carrying on the business or commercial activity of banking, discharge any public function or public duty.

13. Considering the law and the materials placed on record, I hold that there is no illegality or arbitrariness on the part of the second respondent in refusing to grant a loan to the second petitioner. This Court is not the Forum for the petitioners to secure an ex post facto declaration that Ext.P1 sale deed is validly executed.

Consequentially, the writ petition is dismissed by reserving the right of the petitioners to work out their remedies in accordance with the law, if any are available.

Sd/-

C.S.DIAS, JUDGE



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APPENDIX OF WP(C) 31197/2024

PETITIONER EXHIBITS

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| EXHIBIT-P1 | A TRUE COPY OF THE SALE DEED NO. 617 OF
2017 DATED 17-04-2017 OF KATTAKKADA SUB
REGISTRAR'S OFFICE |
| EXHIBIT-P2 | A TRUE COPY OF THE SALE DEED NO.618 OF
2017 DATED 17-04-2017 OF KATTAKADA SUB
REGISTRAR'S OFFICE IN FAVOUR OF V. Y.
YADAV |
| EXHIBIT-P3 | A TRUE COPY OF THE TAX RECEIPT DATED 12-
07-2024 |
| EXHIBIT-P4 | A TRUE COPY OF THE TAX RECEIPT DATED 21-
08-2024 |