

From

The Inspector General of Registration

To

All Deputy Inspectors General of Registration
All District Registrars.
All Section Superintendents.

Sir/Madam,

Sub:- Document No. P2/80 of S.R.O. Edappally.
Ref:- Proceedings No. D.Dis. 14907/82 IR(A) dated,
24.1.1983.

A copy of the proceedings is forwarded herewith for information and necessary action. All District Registrars are requested to communicate this to the subordinates under them.

Yours faithfully,

[Signature]
for Inspector General of Registration.

PROCEEDINGS OF THE BOARD OF REVENUE (LAND REVENUE) TRIVANDRUM

No. D.Dis. 14007/82/IR(A)3.

Dated, 24-1-1983

Sub:- Document No. P2 of 1980 of S.R.O. Edappally - Ref. u/s 54(2) of the Kerala Stamp Act, 1959 - Nature of document - decision communicated.

Ref:- 1. Ins. 2-2930/81 dt. 20.3.1982 from the District Registrar (G) Ernakulam.
2. Ins. 4-5729/81 dated, 5.4.82 and 15.10.1982 from the I.G. of Registration.

The Inspector General of Registration with his report read as first paper above has forwarded a reference made by the District Registrar (G1) Ernakulam under Section 54(2) of the Kerala Stamp Act regarding the nature of document No. P2/80 of S.R. Office, Edappally and the Stamp duty payable thereon.

2. The document No. P2/80 of Sub Registry Office, Edappally is drawn up as a simple mortgage deed for Rs. 26 lacs with power of attorney and it bears a stamp duty of Rs. 62520/-. The Sub Registrar who impounded the document is of the view that it is a mortgage with possession for Rs. 25,00,000/- with a Power of Attorney attracting stamp duty under article

37(a) read with explanation given under article 37(b), and as per article 44(c) of the Schedule to the Kerala Stamp Act. The Inspector General of Registration is of the opinion that the document is a simple mortgage for Rs.25 lakhs as the possession of the property is not specifically given.

2. The Board of has perused the reports and records of the case. According to the recitals in document No. P2/80 of S.R.O. the mortgagee has not power to take over the business of the mortgagor concern in certain events and the mortgagee has got the power to convey, transfer, assure and assign the property. The Company (mortgagor) is seen assigned, transferred and assured unto the Bank of Baroda (Mortgagee) all its plant and machinery whether fixed or not and whether lying loose and or in cases etc. for the consideration of Rs 25 lakhs. There is also a recital in the document that the mortgagee is authorised to hold and enjoy the mortgaged premises and to carry on the business of the company, and to enter upon or take possession of and or receive rents, profits and income of the mortgaged premises. An authorisation given to a person need not necessarily be a power of attorney, unless the person executing it authorised the person to use his name and to act for and in his name. An Authorisation by the mortgagor to the mortgagee is not a power of attorney. A power of attorney is a delegation of authority in writing by which one person is empowered to do an act in the name of another. By the document, under reference, the company had executed a Debenture trust deed in favour of the Bank of Baroda who are the Trustees for the Debenture Holders. The value of the Debentures secured by the ~~first~~ trust deed is 25 lakhs.

The possession of the property as such is not given by mortgagor or taken by the mortgagee and only on happening of some events the provisions relating to possession will operate. The authorisation given by the mortgagee Deed need not be considered as a Power of Attorney in the light of the Govt. letter No.28288/E2/77/RD dated, 19410-79. Further the provision in "simple mortgage for causing the mortgaged property to be sold is not a distinct matter so as to attract additional stamp duty as per Govt. letter No.22930/E2/74/TD dated, 11.3.1979 of Sub Registry Office, Edappally is a simple mortgage deed (for Rs.2500000/-) which falls under Section 37(b) of the schedule to the Kerala Stamp Act.

/By order/

Sd. Secretary.

To

The I.G.of Registration etc etc

Forwarded/by order
Sd. Secy For Secry.

/True copy/

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for Inspector General of Registration.

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The possession of the property as such is not given by mortgage or deed by the mortgagee and only the appearance of some owner is given by the mortgagee. The mortgagee is not to be considered as owner of the property in the light of the Govt. letter No. 2528/52/77 dated 19-10-79. Further the provision in "simple mortgage" for creating the mortgage property to be used in a distinct manner as for a different additional stamp duty as per Govt. letter No. 2528/52/77 dated 19-10-79 is not applicable. Object, therefore, is a simple mortgage deed (for Rs. 250000) which is the subject of the letter No. 2528/52/77 dated 19-10-79.