

Kerala High Court

S.Abhilash vs The Managing Director on 17 August, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 901 of 2007(Y)

1. S.ABHILASH, S/O. LAKSHMANAN,
... Petitioner

Vs

1. THE MANAGING DIRECTOR,
... Respondent

2. THE BRANCH MANAGER,

3. THE SPL. DEPUTY TAHASILDAR (RR)

For Petitioner :SRI.C.P.PEETHAMBARAN

For Respondent :SRI.SHIRAZ ABDULLA

The Hon'ble MR. Justice S.SIRI JAGAN

Dated :17/08/2010

O R D E R

S.SIRI JAGAN, J.

W.P.(C).No. 901 of 2007

Dated this the 17th day of August, 2010

J U D G M E N T

The petitioner filed OS No.616/2003 before the Sub Court, Ernakulam, for specific performance of an agreement for sale of the properties covered by Exhibit P2 sale deed between the petitioner and one Treesa Jojy. The suit was decreed in favour of the petitioner consequent to which the Court caused to execute Exhibit P2 sale deed in respect of the property in favour of the petitioner which has been duly registered with Edappilly Sub Registrar's Office. Subsequently, when the petitioner came to understand that the original of the prior deed has been deposited with the Kerala State

Financial Enterprises Limited as a security for loan amounts due from the said Treesa Jojy to the KSFE, the petitioner approached the KSFE for return of the documents. They refused to part with the title deed on the ground that they have a first charge over the property in so far as the charge itself was created prior to the agreement for sale between the petitioner and the said Treesa Jojy. It is in the above circumstances the petitioner has filed this writ petition seeking the following reliefs:

- i. call for records connecting Exts.P-1 to P-8 and quash Ext.P-8 order issued by the 1st respondent, by issuing a writ of certiorari;
 - ii. issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to release the basic title deed No.6137/1995 of SRO., Edappally and connected documents to the petitioner forthwith;
 - iii. Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents not to proceed against the property of the petitioner covered by Ext.P-2 for recovery of arrears if any due from Smt. Treesa Joji, the former owner of the said property
2. The respondents have filed a counter affidavit opposing the prayers in the writ petition on the ground that they have a first charge in respect of the property.
3. I need not consider the contentions of the petitioner on merits, since the petitioner has now chosen to pay all the amounts due to KSFE from the said Treesa Jojy. To prove the same the petitioner has produced Exhibit P9 receipts for payment of amounts due to the KSFE. The learned standing counsel for the KSFE also agrees that the entire amounts due in respect of the charge in favour of the KSFE has already been paid off and there is no subsisting charge on the property in favour of the KSFE.

Accordingly, the writ petition is disposed of with a direction to the respondents to return the title deeds of the property covered by Exhibit P2 to the petitioner as expeditiously as possible, at any rate, within a period of one month from the date of receipt of a copy of this judgment. In the peculiar facts of the case, it would be open to the KSFE to consider the representation filed by the petitioner seeking OTS benefits commenced notwithstanding the fact that the petitioner has paid the amount.

S.SIRI JAGAN, JUDGE.

rkc