

IN THE COURT OF MUNSIF, MUVATTUPUZHA

Present : Smt. Niveditha M.A, Munsiff.

Tuesday, the 17th day of June 2025/ 27th Jyaishta, 1947

IA No. 1/2024 and IA No. 2/2024 in OS No. 171/2024

IA No. 1/2024 in OS No. 171/2024

Petitioner / Plaintiff :

Ann mol Mathews, aged 32 years, 15/79,
Azhagappapuram Main Raod, Azhagappapuram,
Kanyakumari District, Tamil Nadu- 629401.

By Adv. P.V George

Respondents/ Defendants :

1. The Union Bank Kothamangalam branch represented by its branch Manager, Edaikkatukudiyil Building, Kothamangalam P.O., Pin – 686691.
2. The Authorised Officer, Union Bank Kothamangalam Branch, Thekkekunel Complex, Near KSRTC BUS Station, Kothamangalam P.O., Pin – 686691, Kothamangalam Taluk, Ernakulam District.
3. Girish R, The Authorised Officer/Chief Manager Union Bank of India, Regional Office, Union Bank Bhavan, P.B No. 3667 M G Road, Ernakulam, Pin – 682035.

**R1 By Adv. M/s. P.S Gopalakrishnan Nair, Jayasanker G,
C.P Johny, Gopika Gokul and Anjusha Ajayan.**

R2 and R3 No Vakalath

IA No. 2/2024 in OS No. 171/2024

Petitioner / Plaintiff :

Ann mol Mathews, aged 32 years, 15/79,
Azhagappapuram Main Raod, Azhagappapuram,
Kanyakumari District, Tamil Nadu- 629401.

By Adv. P.V George

Respondents/ Defendants:

1. Jens Joseph, aged 49 years, S/o Joseph, Mundackal House, Cheppukulam P.O., Pin – 685581, Udumbannoor Village, Thodupuzha Taluk, Idukki District, Pin- 685585.
2. Joseph Manayani, aged about 60 years, Manayanickal House, Madakkathanam P.O., Pin – 686670, Manjalloor Village, Muvattupuzha Taluk, Ernakulam District.
3. Sherly Joseph, aged about 56 years, Manayanickal House, Thodupuzha Village, Thodupuzha Taluk, Idukki District, Pin – 685584.
4. Amal Joseph, Aged about 29 years, Manayanickal House, Thodupuzha Village, Thodupuzha Taluk, Idukki District, Pin – 685584.

R1 By Adv. Bobby George and George Kurian

R2, R3 and R4 By Adv. Raju P.V

These petitions have been came up before me for hearing on 12.07.2024 and the court on 17.06.2025 delivered the following:-

COMMON ORDER

These petitions are filed under Order 39 Rule 1 of C.P.C.

IA 01/24 is filed by the petitioner/plaintiff seeking temporary injunction restraining the respondents 5 to 6 from e-auctioning /selling B schedule property and other consequential reliefs.

IA 02/24 is filed by the petitioner/plaintiff against respondents 1 to 4 seeking temporary injunction with respect to A and B schedule properties.

2. The petition averments in brief in IA 01/2024 is as follows:

The suit for declaration of title, fixation of boundary, permanent prohibitory injunction, incidental and consequential reliefs. Plaintiff is residing at Tamilnadu with her husband as her husband is working there. Plaintiff is the absolute owner in possession and enjoyment of 3.64 Ares of land comprised in Survey No. 556/4-1 of Manjalloor Village. Plaintiff obtained the above property by virtue of settlement deed No. 793/2014 dated 10.06.2014 of Kalluorkad Sub Registrar office. The above property is herein after referred to as the plaint A schedule property,

which is more in detail described in the schedule appended hereunder. The original settlement deed of the plaint schedule property has been mortgaged in the Kerala State Financial Corporation for availing loan. There was no road access to the A schedule property. For constructing a road to the A schedule property, plaintiff obtained 1.02 Ares of land in Survey no. 4/1 and 20 Square Meters of property in survey no. 4/1 of Manjalloor Village. Both the above properties are lying together as a compact plot now lying as a mud road. Plaintiff obtained the above property by virtue of Settlement Deed No. 803/2014 dated 11/06/2014 of Kalluorkad Sub Registrar Office. The above property is herein after referred to as the Plaint B schedule road which is more in detail described in the schedule appended hereunder. The original Settlement Deed No. 803/2014 of Kalluorkad SRO of the plaint B schedule property has been mortgaged in the Kerala State Financial Corporation for availing a loan. Mutation of the plaint B schedule property has been effected in the name of plaintiff and the plaintiff has been remitting land tax in respect of the plaint B schedule property in the Manjalloor Village Office and the land tax receipt No. KL070716087/2023 dated

14/12/2023 issued from the Manjalloor Village Office in favour of the plaintiff which shows the remittance of land tax of both A and B schedule properties by the plaintiff. Plaintiff B schedule property has the following properties on its boundaries. On the east of the plaintiff schedule property is the property of Lee Arabia Hotel. Formerly the said property was owned by Raji Thundathi. On the north of the plaintiff B schedule property is the property of Kamalamma and A schedule. On the south of the plaintiff B schedule property is the Thodupuzha -Muvatupuzha Road. On the west of the plaintiff B schedule property is the property of defendants 1 to 4. The defendants 2 to 4 have leased out the property which is lying on the western side of the plaintiff A and B schedule properties to the first defendant. The first defendant has been conducting a saw mill on the western side of the A and B schedule properties. First defendant has been conducting a timber depot in building bearing number VIII/18 -A of Manjalloor Grama Panchayat and its appurtenant land which is having an extent 13 Ares of land in survey nos. 556/4-3,556/4-2- of Manjallor Village in Muvatupuzha Taluk. The above said property is hereinafter referred to as the plaintiff C schedule property,

which is more in detail described in the schedule of the plaint. The first defendant is conducting a saw mill in the C schedule property in an extensive manner. The plaintiff has been settled and working at Tamilnadu. The defendant has unloaded timber logs in the B and C schedule properties. The first defendant has heaped huge timber logs in the B schedule property and due to the heaping of timber logs in the B schedule; the plaintiff cannot go to schedule property. The entire B schedule property is now heaped with various types of timber such as teak, anjili, Mahagony and jack fruit trees. Plaintiff came to the plaint A schedule property on 13/5/2024 on leave with a view to do some repairing, maintenance and painting works of the residential building situated in the plaint A schedule property. However, the plaintiff could not enter into the A schedule property as there are huge timbers placed in the B schedule road. Plaintiff could not transport the goods through the B schedule to the A schedule and unload the same to the A schedule property. In the residential building situated in the A schedule property, plaintiff has seen that a Possession Notice has been affixed in which it is stated that properties described in the Possession Notice are going to be

taken possession by the 5th and 6th defendants. When the plaintiff perused the boundaries of the properties scheduled in the Possession Notice, plaintiff came to know that the 5th and 6th defendants are going to take possession of B schedule property and a portion of the A schedule property. Plaintiff detached the Possession Notice from the Door of the residential building of the plaintiff A schedule property. In the possession notice the boundaries of the properties are wrongly shown by the 5th and 6th defendants which is stated intentionally. The eastern boundary of the property covered by the possession notice is shown as Property of Lee Arabia Hotel. It is most humbly submitted that defendants 1 to 4 have no property up to the property of Lee Arabia hotel. In between the properties of C schedule and the property of Lee Arabia, the plaintiff's B schedule property is situating. So it can be seen that even if the extent of the C schedule property is shown as 15 Ares, actually the defendants 2 to 4 hold very less land than the title deed. It is reliably learnt that the defendants 1 to 4 have taken loan from the 5th and 6th defendants. While taking loan from the defendants 5 and 6, the other defendants might have shown the property up to the property of Lee Arabia. The 5th and 6th

defendants without perusing the documents properly reached a conclusion that the defendants 2 to 4 have properties up to the eastern Lee Arabia Hotel. It is most humbly submitted that the defendants 2 to 4 are not in physical possession of so much extent of properties as described in their title Deeds. For widening the Thodupuzha - Muvatupuzha high way, properties were acquired from the C schedule. The defendants 1 to 4 have sold out certain extent of land from the western side of C schedule property to third parties. The plaintiff has questioned the illegal acts of the defendants. At that time the defendants are not recognising the plaintiff's title, ownership and possession in the plaint B schedule property. The defendants on the other hand denying the plaintiffs title, possession, ownership and possession in the B schedule property. The defendants 2 to 4 uttered to the plaintiff that plaintiff has no property as described the B schedule. Since the defendants have denied plaintiff's ownership, title, possession in the B schedule property, there is a cloud cast upon the plaintiff's title in the B schedule property. In the circumstances the title and possession of the plaint B schedule property is to be declared by a decree of declaration

and an injunction is to be passed against the defendants. The defendants 1 to 4 have destroyed the western boundary rubble packing of the B schedule property. At present there is no physical boundary on the western boundary of the B schedule property as against the plaintiff C schedule property. As there is no physical boundary on the western boundary of the B schedule property, the same is to be fixed through survey and demarcation and the plaintiff may be allowed to construct a boundary wall on the western boundary of the B schedule as fixed by this Hon'ble Court. The plaintiff is the title holder of the plaintiff B schedule property. Nobody other than the plaintiff has got any kind of right, title, ownership, possession and enjoyment of the plaintiff B schedule property. Plaintiff got the plaintiff A and B schedule properties by virtue of Settlement Deed numbers above mentioned. Hence the plaintiff is entitled to get the permanent prohibitory injunction restraining the defendants their men and agents from trespassing upon the plaintiff A and B schedule properties or placing any kind of obstructions in the B schedule property or placing any timber logs in the B schedule property or annexing the B schedule property as part of C schedule property or

committing any sort of waste or mischief in the B schedule property or doing any other acts which is detrimental to the peaceful possession and enjoyment of the plaint A and B schedule property. The 5th and 6th defendants are the Union Bank Kothamangalam Town branch and the authorised officer respectively from whom the defendants 2 to 4 had alleged to have taken loan. The defendants 5 and 6 now are attempting to take possession of the Plaint B schedule property along with the C schedule property under the cover of Possession Notice. It is most humbly submitted that the plaintiff has not given the plaint B schedule property to the 5th and 6th defendants as security for any loan or stood as a surety for any security interest. The defendants have no manner of right whatsoever in the plaint A and B schedule properties. If the 5th and 6th defendants take possession of the B schedule property and sold into auction, plaintiff will be put to irreparable loss and injuries. The defendants 5 and 6 have no, manner of right to sell the B schedule property along with the C schedule property. If it is sold out irreparable loss and injuries will be caused to the petitioner/plaintiff. In all the notice published by the banks, the B schedule property is included for

sale. Hence the 5th and 6th defendants may be restrained from doing so. Petitioner is filing the accompanying application for passing an injunction order. Petitioner has proved a prima facie case before this Honble court. The balance of convenience stands in favour of the petitioner. If the temporary injunction application is sought for is not granted, irreparable loss and injuries will be caused to petitioner.

3. The respondents 1 and 3 filed counter affidavit with the following contentions: - The above suit is nothing but a collusive tactics and the fraud and the foul play by the plaintiff and defendants 1 to 4 with a malafide intention to stop and to obstruct the legal proceedings initiated by the bank against the defendants 2 to 4 and the secured asset. The above suit is absolutely not maintainable either in law or on facts. There is absolutely statutory bar as per the specific provision of the SARFAESI Act 2002 and the suit is liable to be dismissed on that ground itself. The maintainability of the above suit and the injunction petition is to be heard as a preliminary issue. The allegation in paragraphs 4 and 5 of the affidavit filed in support of the above application are false and incorrect and hence denied. The allegation that

the plaintiff is the owner of the plaint A schedule property is to be proved by the plaintiff. The identity and location of the plaint A schedule property is to be proved by the plaintiff and the same is hereby disputed by the respondents. The allegation with regard to the boundaries of the plaint A schedule property as alleged is not correct and hence denied. The allegations in paragraph 6 of the affidavit filed in support of the above application are false and incorrect and hence denied. The allegation that the plaintiff obtained the plaint B schedule property by virtue of Settlement Deed No. 803/2014 of S.R.O. Kalloorkadu is absolutely false and incorrect and hence denied. There is no such plaint B schedule property in existence as alleged in the above petition. There is no such plaint B schedule property as alleged. No such property actually obtained by the plaintiff nor she obtained possession of the same as alleged in the document No. 803 of 2014 as alleged. Mere description of such property in such documents will not confer any right, title or interest over the same to the plaintiff. The location and alignment of the so called plaint B schedule property as alleged in the plaint is not correct and hence denied. The plaint B schedule property is absolutely a

false, fabricated, imaginary, fictitious and illusive narration and hence denied. The allegation in paragraph 7 of the affidavit filed in support of the above application are absolutely false and hence denied. The allegation with regard to the boundaries of the so called plaint B schedule property are also false and incorrect and hence denied. No such plaint B schedule in existence with the said boundaries as alleged. The allegations in paragraph 8 of the affidavit filed in support of the above application are false and incorrect and hence denied. The allegation that the defendants 2 to 4 leased out the plaint C schedule property to the 1st defendant and the first defendant has been conducting a Saw Mill in the plaint C schedule property and timber depot in building bearing No. XVIII/18A etc. are false and incorrect and hence denied. The Saw Mill and the deport are being conducted by the defendants 2 to 4 themselves and the entire license and authorization for conducting the same are in their name. The 1st defendant is only a stooge and helper of the defendants 2 to 4. The story of the alleged lease is fraudulently made by the defendants 1 to 4 in collusion with each other with a malafide intention to obstruct the proceedings initiated by the defendants against

the secured asset as per the SARFAESI Act. The 1st defendant is not a lessee as alleged. There is no valid lease between the 1st defendant and the defendants 2 to 4. The 1st defendant has no possession over the plaintiff C schedule property as alleged either as a lessee or otherwise. Even if the defendants 1 to 4 in collusion with each other had fabricated any documents purporting to be lease deeds, those are not at all binding upon the defendants 5 and 7. The allegations in paragraph 9 of the affidavit filed in support of the above application are absolutely false and incorrect and hence denied. The allegation with regard to the unloading and heaping of the timber logs in the plaintiff B schedule property is without any basis. There is no such B schedule property as in existence as alleged in the above petition. The allegation that the plaintiff came to the plaintiff schedule property on 13.05.2024 with a view to do repairing maintenance etc. that she could not enter into the plaintiff A schedule property as there are huge timbers placed in the plaintiff B schedule road etc are false and incorrect and hence denied. There has not been any such plaintiff B schedule road in existence as alleged. The allegations in paragraph 11 of the affidavit filed in support of the above application are

absolutely false and incorrect and hence denied. No possession notice has been affixed in the building situated in the plaint A scheduled property as alleged in the plaint. The true facts are stated here under. The third defendant is the absolute owner of the property having an extent of 1.01 Ares in Sy. No.556/4/2-2 by virtue of Sale Deed No.424/2007 of SRO Kalloorkkadu, 6.07 Ares in Sy. No.556/4/2-3 by virtue of Sale Deed No.459/2007, 2.22 Ares in Sy. No.556/4/3-3, 0.60 Ares in Sy. 556/4/2-4, by virtue of Sale Deed No. 530/2007 of SRO Kalloorkkadu and 5.26 Ares in Sy. No. 556/4/3-4 by virtue of Sale Deed No.531/2007 of SRO Kalloorkkadu. The said properties are situated in Manjalloor Village and are lying contiguously. The second and 3rd defendant availed an agricultural loan from the fifth defendant bank for a limit of 2 crores. The 4th defendant stood as guarantor to the said loan. As a collateral security for the repayment of the said loan the third defendant mortgaged the properties having an extent of 15.16 Ares comprised in Sy. Nos. 556/4/2-4, 556/4/3-3, 556/4/2-3, 556/4/2-2.556/4/3-4, of Manjalloor Village. By depositing the title deeds of the said properties with the bank with an intention to create equitable

mortgage in respect of the said properties in favour of the bank. Hence the said property which are lying contiguous became the secured asset in favour of the bank. The defendants 2 to 4 also are none other than the parents and brother of the plaintiff. The defendants 2 to 4 submitted location sketch in respect of the said property issued by the Village Officer Manjalloor Village before the bank in respect of the properties which they offer as security for the said loan. In the said location sketch on the eastern boundary of the said property Lee Arabia Hotel is shown. There is no way or road in existence in between the secured asset and the property of Lee Arabia Hotel nor any such plaint A and B schedule properties as alleged in the plaint. The defendants 2 to 4 also submitted the basic tax receipt, possession certificate, property tax receipt in respect of the building in the secured asset. The bank accepted the secured asset property after fully convinced that there is no encumbrances over the said property. The defendants 2 to 4 committed gross default in the repayment of the said loan and the loan has been classified as a non-performing asset with effect from 07.01.2024 an amount of Rs 2,43,05,821.20 is outstanding in the loan A/c of the

defendants 2 to 4 to the bank. In the said circumstances the bank issued notice dated 15.01.2024 under section 13(2) of the SARFAESI Act 2002 to the defendants 2 to 4 demanding them to pay the due amount with future interest and other charges within 60 days of receipt of the said notice. To the said notice the defendants 2 to 4 issued reply stating absolutely untenable contentions. To the said reply the bank issued letter dated 27.03.2024 stating the reasons for not accepting the contention in the reply notice issued by defendants 2 to 4. Even there after also the defendants 2 to 4 had not cared to pay the secured debt and hence the bank has taken symbolic possession of the secured asset on 24.04.2024 with due possession notice. All the allegations contrary to the above mentioned facts are absolutely false and incorrect and hence denied. The allegations in paragraph 12 of the affidavit filed in support of the above application are absolutely false and incorrect and hence denied. The plaintiff is fully aware of the loan availed by her parents from the bank and she is also aware of the documents submitted by the defendants 2 to 4 before the bank for the availing of the loan. The dispute regarding the eastern boundary is absolutely false and incorrect and hence denied. The

defendants 2 to 4 had no title, possession or interest over the so called
plaint A and B schedule properties as alleged and no such property as
described there in was in their possession at any point of time. The
allegation that the defendants 1 to 4 has no property up to the Lee
Arabia Hotel is false and incorrect and hence denied. The further
allegation that in between the property of the Lee Arabia Hotel and the
plaint C schedule property, the plaint B schedule property is situated is
also a false and concocted story. No such property has ever been existed
at any point of time as alleged. The further allegation that the defendants
2 to 4 hold very less extent of properties than 15 Ares is also false and
incorrect and hence denied. The allegations in paragraph 13 of the
affidavit filed in support of the above application are absolutely false and
incorrect and hence denied. The plaintiff is fully aware of the loan
availed by the defendants 2 to 4 from the bank and the documents
submitted by them before the bank for the same and also regarding the
specification of the property which is offered as the secured asset. The
bank granted loan to the defendants 2 to 4 after fully convinced of the
marketable title and the boundary of the secured asset. The allegations

in paragraph 14 of the affidavit filed in support of the above application are absolutely false and incorrect and hence denied. The allegation that the defendants 2 to 4 are not in physical possession of the properties which is shown in their title deed, that for widening the road, the properties were acquired from C schedule, that the defendants 2 to 4 sold out certain extent properties on the western side etc.. are absolutely baseless. The allegations in paragraph 15 and 16 of the e affidavit filed in support of the above application are absolutely false and incorrect and hence denied. The plaintiff have miserably failed to prove the title and possession over the so called plaint B schedule property. The clod if any created on the title of the plaintiff is nothing but due to her lack or title and possession over the so called plaint B schedule property and for which these respondents are not at all liable. The so called plaint B schedule property is nothing but imaginary. The plaintiff has not obtained actual title and possession over the so called plaint B schedule property. The so called vendors of the plaintiff has no title or possession over the so called plaint B schedule property. No such property ever existed actually at any point of time as alleged in the above petition. The

plaintiff is coming before this Hon'ble court seeking relief in respect of a property which is not in existence nor identifiable. The plaintiff has no title or possession over the same. Now huge amount is due to the bank from the defendants 2 to 4. The defendants 2 to 4 after availing huge amount are freely playing the foul game by keeping their own daughter in front to obstruct the legal proceedings initiated by the bank. The advocate commissioner who inspected the property also could not identified any such plaint B schedule property as alleged in the spot. There is no such B schedule in existence at any point of time. The plaintiff is only an agent of the defendants 2 to 4 and acting in tune of them. Her only intention is to prevent the bank from recovering the huge amount which is due from her parents to the bank. She has not come before this Hon'ble court with clean hands. The plaint B schedule property is not identifiable. In such circumstances no injunction can be granted as sought for by the plaintiff. The balance of convenience is also in favour of not granting injunction as prayed for. If injunction as prayed for is granted, the bank will be put to irreparable injury and hardship. Granting of injunction order as prayed for is nothing but encouraging the

chronic defaulters to defraud the bank with out repaying the loan availed by them.

4. The petitioner/plaintiff filed reply affidavit against the counter affidavit filed by the respondents/defendants 5 to 7 with the following contentions: - The respondents are the defendants in the suit.

For the sake of convenience and brevity, the parties in the above injunction application are herein after referred to as per their status in the plaint. Suit has been filed for declaration of title, fixation of boundary, permanent prohibitory injunction, incidental and consequential reliefs. The averments contained in the counter affidavit filed by the 5th, 6th and 7th respondents/defendants is not correct. The counter affidavit filed by defendants 5 to 7 are without any bonafides or good faith. The intention of the defendants 5 to 7 is to defeat the lawful rights of the plaintiff in the plaint A and B schedule properties. All averments contained in the counter affidavit, except those that are specifically admitted hereunder or explained otherwise are denied being false. The averments contained in paragraph number three of the counter affidavit that the suit is barred by the provisions of SARFAESI act and

the suit is not maintainable etc are absolutely false and hence denied. In what manner the suit is not maintainable is not stated by respondents 5 to 7 in the counter affidavit. The plaintiff has not mortgaged/deposited or in any way encumbered her plaint A and B schedule property to the defendant's bank. The plaintiff is not any way related with the bank. The plaintiff is not stood as a surety in the defendant's bank. The various contention of the defendants bank will go to show that plaintiff has cause of action to file the suit. Prima facie, this Hon'ble court can see that unless an ad-interim injunction is not passed in the above case, the defendants 5 to 7 bank will sell/auction the plaint A and B schedule properties. The contention of the defendants bank that there is no such property is in existence as described as plaint A and schedule properties is baffling. At this juncture, it is most humbly submitted that suit documents 1 and 2 will go to show that plaintiff is the sole title holder in possession and enjoyment of the plaint A and B schedule properties. Suit document 3 will go to show that plaintiff is remitting land tax in her thandaper account in the Manjalloor Village office. Defendants bank is under the misconception that the so called mortgaged property by

defendants 2 to 4 will extend up to the property of eastern Lee Arabia Hotel. It is absolutely false. The defendant's bank ought to have verified/secured the title deeds of the properties before lending/sanctioning loan to the defendants 2 to 4. Then officers of the defendant's bank might have conspired with the defendants 2 to 4 before lending/sanctioning loan. For which, the plaintiff is not liable in any manner. The boundaries of the plaintiff A and B schedule properties appended to these deeds are tallying with the boundaries of plaintiff A and B schedule properties in the plaintiff. The defendants 5 to 7 have flatly denied the title of the plaintiff in the plaintiff A and B schedule properties without any bonafide or good faith. Hence petitioner filed the suit for declaring title in the A and B schedule properties. Defendants 5 to 7 should not have denied title in the plaintiff A and B schedule properties. The defendants 5 to 7 should have respected petitioners title, possession, interest, right in the plaintiff A and B schedule properties. In this context, it is most humbly submitted that the plaintiff B schedule property is the sole access to the plaintiff A schedule property and without which the plaintiff B schedule, the plaintiff A schedule property cannot be enjoyable.

The averments contained in paragraph number five of the counter affidavit that the plaintiff had not obtained the plaint A and B schedule properties by virtue of settlement deed no. 803/2014 of Kalloorkadu SRO is not correct and hence denied. The further statement in the counter affidavit that plaint B schedule property is absolutely false, fabricated, imaginary, factious and illusive narration etc are not correct. The allegation contained in paragraph number seven of the counter affidavit that there has not been any such plaint B schedule road in existence as alleged is not correct. If that be so, the defendants 5 to 7 should state where the plaint B schedule property is which is covered by suit document no 2. The statements contained in paragraph eight of the counter affidavit that no possession notice has been affixed in the building situated in the plaint A schedule property is not correct. At the risk of repetition, it is most humbly submitted that defendant's bank had affixed the possession notice on the front door of the residential building situated in the plaint A schedule property. On seeing this notice, plaintiff detached the same from the door. Defendants 5 to 7 simply denied the identity of the plaint A and B schedule properties. The statements

contained in paragraph number thirteen of the counter affidavit that advocate commissioner who inspected the properties could not identify any such plaint B schedule property is also not correct and hence denied. The advocate commissioner appointed by this Hon'ble Court has very clearly identified the plaint schedule properties. It is pertinent to note at this juncture that these respondents/defendants have not filed any objection or petition to set aside the commission report filed by the advocate commissioner. The advocate commissioner after seeing the matters reported the true facts. The averments contained in paragraph number twelve of the counter affidavit that the plaintiff have miserably failed to prove the title and possession over the plaint schedule property is a false statement. The averments contained in paragraph number thirteen of the counter affidavit that the plaint B schedule property is not identifiable are a false statement. In view of the contentions raised by the defendants bank it can be seen that the cause of action alleged in the plaint is correct. The illegal acts of the defendant's bank are to be restrained by an order of temporary injunction. The petitioner has come before this Hon'ble court with most clean hands petitioner is entitled to

the equitable relief of injunction. The petitioners remedy is only before this Hon'ble Court. The petitioner/plaintiff has proved a prima -facie case before this Hon'ble Court. The balance of convenience stands in favour of the petitioner. If the temporary injunction sought for is not granted, irreparable loss and injuries will be caused to the petitioner

5. **The petition averments in brief in IA 02/2024 is as follows:** The suit for declaration of title, fixation of boundary, permanent prohibitory injunction, incidental and consequential reliefs. Plaintiff is residing at Tamilnadu with her husband as her husband is working there. Plaintiff is the absolute owner in possession and enjoyment of 3.64 Ares of land comprised in Survey No. 556/4-1 of Manjalloor Village. Plaintiff obtained the above property by virtue of settlement deed No. 793/2014 dated 10.06.2014 of Kalluorkad Sub Registrar office. The above property is herein after referred to as the plaint A schedule property, which is more in detail described in the schedule appended hereunder. The original settlement deed of the plaint schedule property has been mortgaged in the Kerala State Financial Corporation for availing loan. There was no road access to the A schedule property. For constructing a

road to the A schedule property, plaintiff obtained 1.02 Ares of land in Survey no. 4/1 and 20 Square Meters of property in survey no. 4/1 of Manjalloor Village. Both the above properties are lying together as a compact plot now lying as a mud road. Plaintiff obtained the above property by virtue of Settlement Deed No. 803/2014 dated 11/06/2014 of Kalluorkad Sub Registrar Office. The above property is herein after referred to as the Plaint B schedule road which is more in detail described in the schedule appended hereunder. The original Settlement Deed No. 803/2014 of Kalluorkad SRO of the plaint B schedule property has been mortgaged in the Kerala State Financial Corporation for availing a loan. Mutation of the plaint B schedule property has been effected in the name of plaintiff and the plaintiff has been remitting land tax in respect of the plaint B schedule property in the Manjalloor Village Office and the land tax receipt No. KL070716087/2023 dated 14/12/2023 issued from the Manjalloor Village Office in favour of the plaintiff which shows the remittance of land tax of both A and B schedule properties by the plaintiff. Plaint B schedule property has the following properties on its boundaries. On the east of the plaint schedule

property is the property of Lee Arabia Hotel. Formerly the said property was owned by Raji Thundathi. On the north of the plaint B schedule property is the property of Kamalamma and A schedule. On the south of the plaint B schedule property is the Thodupuzha -Muvatupuzha Road. On the west of the plaint B schedule property is the property of defendants 1 to 4. The defendants 2 to 4 have leased out the property which is lying on the western side of the plaint A and B schedule properties to the first defendant. The first defendant has been conducting a saw mill on the western side of the A and B schedule properties. First defendant has been conducting a timber depot in building bearing number VIII/18 -A of Manjalloor Grama Panchayat and its appurtenant land which is having an extent 13 Ares of land in survey nos. 556/4-3, 556/4-2- of Manjallor Village in Muvatupuzha Taluk. The above said property is hereinafter referred to as the plaint C schedule property, which is more in detail described in the schedule of the plaint. The first defendant is conducting a saw mill in the C schedule property in an extensive manner. The plaintiff has been settled and working at Tamilnadu. The defendant has unloaded timber logs in the B and C

schedule properties. The first defendant has heaped huge timber logs in the B schedule property and due to the heaping of timber logs in the B schedule; the plaintiff cannot go to schedule property. The entire B schedule property is now heaped with various types of timber such as Teak, Anjili, Mahagony and Jack Fruit trees. Plaintiff came to the plaintiff A schedule property on 13/5/2024 on leave with a view to do some repairing, maintenance and painting works of the residential building situated in the plaintiff A schedule property. However, the plaintiff could not enter into the A schedule property as there are huge timbers placed in the B schedule road. Plaintiff could not transport the goods through the B schedule to the A schedule and unload the same to the A schedule property. In the residential building situated in the A schedule property, plaintiff has seen that a Possession Notice has been affixed in which it is stated that properties described in the Possession Notice are going to be taken possession by the 5th and 6th defendants. When the plaintiff perused the boundaries of the properties scheduled in the Possession Notice, plaintiff came to know that the 5th and 6th defendants are going to take possession of B schedule property and a portion of the A schedule

property. Plaintiff detached the Possession Notice from the Door of the residential building of the plaint A schedule property. In the possession notice the boundaries of the properties are wrongly shown by the 5th and 6th defendants which is stated intentionally. The eastern boundary of the property covered by the possession notice is shown as Property of Lee Arabia Hotel. It is most humbly submitted that defendants 1 to 4 have no property up to the property of Lee Arabia hotel. In between the properties of C schedule and the property of Lee Arabia, the plaintiff's B schedule property is situating. So it can be seen that even if the extent of the C schedule property is shown as 15 Ares, actually the defendants 2 to 4 hold very less land than the title deed. It is reliably learnt that the defendants 1 to 4 have taken loan from the 5th and 6th defendants. While taking loan from the defendants 5 and 6, the other defendants might have shown the property up to the property of Lee Arabia. The 5th and 6th defendants without perusing the documents properly reached a conclusion that the defendants 2 to 4 have properties up to the eastern Lee Arabia Hotel. It is most humbly submitted that the defendants 2 to 4 are not in physical possession of so much extent of properties as

described in their title Deeds. For widening the Thodupuzha - Muvatupuzha high way, properties were acquired from the C schedule. The defendants 1 to 4 have sold out certain extent of land from the western side of C schedule property to third parties. The plaintiff has questioned the illegal acts of the defendants. At that time the defendants are not recognising the plaintiff's title, ownership and possession in the plaint B schedule property. The defendants on the other hand denying the plaintiffs title, possession, ownership and possession in the B schedule property. The defendants 2 to 4 uttered to the plaintiff that plaintiff has no property as described the B schedule. Since the defendants have denied plaintiff's ownership, title, possession in the B schedule property, there is a cloud cast upon the plaintiff's title in the B schedule property. In the circumstances the title and possession of the plaint B schedule property is to be declared by a decree of declaration and an injunction is to be passed against the defendants. The defendants 1 to 4 have destroyed the western boundary rubble packing of the B schedule property. At present there is no physical boundary on the western boundary of the B schedule property as against the plaint C

schedule property. As there is no physical boundary on the western boundary of the B schedule property, the same is to be fixed through survey and demarcation and the plaintiff may be allowed to construct a boundary wall on the western boundary of the B schedule as fixed by this Hon'ble Court. The plaintiff is the title holder of the plaint B schedule property. Nobody other than the plaintiff has got any kind of right, title, ownership, possession and enjoyment of the plaint B schedule property. Plaintiff got the plaint A and B schedule properties by virtue of Settlement Deed numbers above mentioned. Hence the plaintiff is entitled to get the permanent prohibitory injunction restraining the defendants their men and agents from trespassing upon the plaint A and B schedule properties or placing any kind of obstructions in the B schedule property or placing any timber logs in the B schedule property or annexing the B schedule property as part of C schedule property or committing any sort of waste or mischief in the B schedule property or doing any other acts which is detrimental to the peaceful possession and enjoyment of the plaint A and B schedule property. The 5th and 6th defendants are the Union Bank Kothamangalam Town branch and the

authorised officer respectively from whom the defendants 2 to 4 had alleged to have taken loan. The defendants 5 and 6 now are attempting to take possession of the Plaint B schedule property along with the C schedule property under the cover of Possession Notice. It is most humbly submitted that the plaintiff has not given the plaint B schedule property to the 5th and 6th defendants as security for any loan or stood as a surety for any security interest. The defendants have no manner of right whatsoever in the plaint A and B schedule properties. If the 5th and 6th defendants take possession of the B schedule property and sold into auction, plaintiff will be put to irreparable loss and injuries.

6. No objection filed even after issuing notice to the counsel holding vakalath of the respondents. Hence heard petitioner and taken for orders.

7. From the above rival contentions the points arise for consideration are:-

- 1) *Whether the petitioner proved a prima facie case in his favour to grant the relief of interim injunction as prayed for?*

2) *In whose favour the balance of convenience does exist?*

3) *Whether the petitioner will be put into irreparable injury, if the relief of interim injunction is not granted?*

4) *Order or costs?*

8. On the side of the petitioners Exts.A1 and A3 are marked.

On the side of the respondents no documents are marked.

09. From the side of the petitioner Exts A1 to A11 were marked. From the side of the respondent Exts B1 to B11 were marked in IA 1/2024. The commission report was marked as Ext C1,C1(a), C1(b) in IA 1/2024.

10. Heard both sides in IA 01/24. Heard petitioner in IA 02/24 and taken for orders.

11. Point No 1 to 4: - These points are allied and discussed together. Here the case of the petitioner is that the plaintiff is the absolute owner of the plaint A schedule property. IA 01/24 is filed by the petitioner/plaintiff seeking temporary injunction restraining the

respondents 5 to 6 from e-auctioning /selling B schedule property and other consequential reliefs and IA 02/24 is filed by the petitioner/plaintiff against respondents 1 to 4 seeking temporary injunction with respect to A and B schedule properties. The respondent bank argued that the B schedule is not accordance with the documents and not identifiable. There are no physical boundaries, and as per Section 41(h), an equal and effective remedy is available.

12. The bank had informed that they have initiated recovery proceedings and thereafter issued Ext B7 , B9 and B11 notices under section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002. Here the borrowers are the parents of the petitioner. The petitions, as per the respondent bank is only as a collusive step to stop from the bank from proceeding further.

13. By virtue of Section 34 of the Act no Civil Court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a debt recovery tribunal or the Appellate Tribunal is empowered by or under this act to determine and no injunction shall be granted by

any court or any authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this act or under the recovery of debts due to banks and Financial Institutions Act 1993.

14. Sec 17(9) of the said Act provides that, “Any person (including borrower), “ aggrieved by any of the measures referred to in sub-section (4) of section 13 taken by the secured creditor or his authorised officer under this chapter may make an application along with such fee, as may be prescribed, to the Debts Recovery Tribunal having jurisdiction in the matter within 45 days from the date on which such measures had been taken.”. Here the petitioner is seeking interim injunction against the respondent bank from selling the plaint schedule property and selling the same under the provisions of SARFAESI Act. The jurisdiction of this court is barred by virtue of the provision discussed above. So, the petitioner if aggrieved can approach DRT as per the said provision. The intention of the petitioner in the other interlocutory application can be considered as collusive one with her parents as they have not filed any counter affidavit or ready for hearing the matter is only to drag the proceedings initiated by the respondent

bank. The petitioner has not invoked his remedy to approach the Hon'ble Debt Recovery Tribunal for getting relief against the action taken by the respondent. Hence in this circumstance, this court is of the view that the petitioner has failed to prove a prima facie case in her favour. The balance of convenience is not in her favour. The jurisdiction of the civil court cannot be enforced in a matter which is exclusively within the jurisdiction of the debt recovery tribunal. The claim of the petitioner herein is only liable to be decided by the debt recovery tribunal. Hence in view of my discussion, all the points are found against the petitioner. The Interlocutory applications are liable to be dismissed.

In the result

1. The interlocutory applications are dismissed.
2. No order as to costs.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open court on this the 17th day of June 2025.

Sd/-
Tony. T. Thadathil,
JFCM -III Muvattupuzha,
For Niveditha M.A,
Munsiff.

APPENDIX

Petitioner's Exhibits:

A1	10.06.2014	Photocopy of settlement Deed No. 793/1/2014 of Sub Registrar Office, Kalloorkad.
A2	11.06.2014	Photocopy of settlement Deed No. 803/2014 of Sub Registrar Office, Kalloorkad.
A3	14.12.2023	Photocopy of tax receipt issued from Manjalloor Village Office.
A4	12.04.2024	Tax Receipt issued from Manjalloor Village Office.
A5	24.04.2024	Photocopy of possession notice.
A6	22.04.2024	Schedule of property submitted by Union Bank of India, Kothamangalam Branch.
A7	19.03.2013	Photocopy of Sale Deed No. 433/13/I of Kalloorkad Sub Registrar Office.
A8	20.03.013	Photocopy of Sale Deed No. 451/13/I of Kalloorkad Sub Registrar Office.
A9	06.07.2012	Photocopy of Sale Deed No. 1236/12/I of Kalloorkad Sub Registrar Office.
A10	17.04.2012	Photocopy of sale Deed No. 763/12 of Kalloorkad Sub Registrar Office.
A11	16.12.2023	Copy of Possession Certificate issued from Manjalloor Village Office.

Respondent's Exhibits:

B1	16.03.2007	Photocopy of Sale Deed No. 531/07 of Kalluorkad Sub Registrar Office.
B2	02.03.2007	Photocopy of Sale Deed No. 424/07 of Kalluorkad Sub Registrar Office.
B3	02.03.2007	Photocopy of Sale Deed No. 459/07 of Kalluorkad Sub Registrar Office.
B4	12.03.2007	Photocopy of Sale Deed No. 530/07 of Kalluorkad Sub Registrar Office.
B5	05.06.2020	Copy of Tax Receipt issued from Manjallor Village Office.
B6	20.03.2020	Copy of Cash Reciept.
B7	15.01.2024	Copy of Demand Notice.
B8	27.11.2020	Photocopy of Possession Certificate issued from Manjallor Village Office.
B9	15.01.2024	Photocopy of Demand Notice.
B10	27.11.2020	Photocopy of Location Certificate issued from Manjallor Village Office.
B11	27.03.2024	Copy of letter.

Court Exhibits:-

C1	05.06.2024	Commission Report filed by Adv. Commissioner Bhavya Ajith.
C1(a)	05.06.2024	Rough sketch filed by Adv. Commissioner Bhavya Ajith.
C1(b)	05.06.2024	Photographs filed by Adv. Commissioner Bhavya Ajith.

Witnesses on both side : NIL

**Id/-
Munsiff.**

SMP
DM

IA 1-24 and IA 2-24 in OS 171-24

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ORDER
IA No. 1/2024 And IANo. 2/2024 in
OS No. 171/2024
Dated : 17.06.2025