

IN THE COURT OF MUNSIFF, MUVATTUPUZHA

Present : Sri. Tony T. Thadathil, JMFC-III Muvattupuzha,

In Charge of Munsiff, Muvattupuzha

Monday, the 1st day of December 2025/ 10th Agrahayana, 1947

I.A. 1/2025 in O.S. 281/2025

Petitioner/ Plaintiff:

Jaison George, aged 53 years, S/o. George,
Elavunkanirappel (Palakudiyil House), Ayavana
Gramapanchayat, Enanalloor Kara, Enanalloor Village,
Muvattupuzha Taluk

By Adv. Gigi Peter

Respondent/ Defendant :

Indian Bank, Chandrika Building, M.G. Road,
Ernakulam branch, Cochin- 31- represented by its
Chief Manager

By Adv. Sasidharan Nair

This petition came up for hearing on 24.11.2025 and this Court
on 01.12.2025 delivered the following:-

ORDER

This is a petition filed under Order XXXIX rule 1 and section 151
of the Code of Civil Procedure, 1908, seeking an order of temporary
prohibitory injunction.

2. Petitioner/ plaintiff states that the plaint schedule property originally belonged to him as per Sale Deed No. 987/2000 of Kalloorkkad S.R.O. Petitioner is residing in a building in the said property, along with his family. Though the plaint schedule property was sold by the petitioner to one Nithin Venu, Akhil Venu, and Abhirami Nithin, Vattamthattayil House, Maradi Kara, part of the sale consideration was not received by the petitioner. Petitioner continued in possession of the said property by way of a lease arrangement between the parties. The monthly rental amount is being adjusted in the sale consideration due to the petitioner. The plaint schedule property is clearly identifiable from the adjacent properties. It is learnt that the Nithin and other purchasers have obtained a loan from the respondent bank by mortgaging the plaint schedule property. Yet, petitioner is a statutory tenant and he has the right to continue the tenancy until it is finally determined through a Court of law. Respondent and its officials have come to the plaint schedule property and threatened that the petitioner and his family members will be evicted from the building in the property by use of force. On 26.09.2025, respondent and its men attempted to trespass into the building in the plaint schedule property

and evict the petitioner therefrom. Due to the timely intervention of the petitioner, the same was aborted. Hence, the above petition is filed seeking an order of temporary prohibitory injunction restraining the respondent and its men from evicting the petitioner and family from the plaint schedule property without recourse to due process of law. Further, it is prayed to injunct the respondent and men by way of a temporary prohibitory injunction from curtailing the amenities enjoyed by the petitioner in the plaint schedule property till the disposal of the suit.

3. Respondent/ defendant filed counter-affidavit stating that if at all the cheque issued for payment of the balance sale consideration was dishonoured, it is unclear as to why the petitioner did not initiate any legal action to recover the said money during the course of the last 6 years. By way of sale deed number 286/2023 dated 02.03.2023, Nithin Venu, Akhil Venu and Abhirami Nithin have sold the suit property to Sri Ujil Valappil Unnikrishnan. Sri. Ujil had mortgaged 36.42 Ares of land purchased by him as above, with the respondent bank for obtaining a loan of ₹ 1,50,00,000/-. When he defaulted in repayment of loan, SARFAESI proceedings were initiated against the mortgaged property.

For handing over physical possession of the property to the respondent bank, the hon'ble Chief Judicial Magistrate Court has appointed a commissioner. However, petitioner resisted such handing over by the commissioner. Section 34 of the SARFAESI Act prohibits jurisdiction of civil courts to entertain any suit or proceeding in the respect of any matter which the debt recovery tribunal is empowered under the Act to determine. Hence, this Court lacks jurisdiction to try the present suit.

The amount due to the respondent bank is around ₹ 2.35 crores as on 27.06.2025. Recovery of loan amount, which is public money, is essential for the well-being of nations' economy. Hence, it is prayed to dismiss the above petition with exemplary costs.

4. Heard the learned counsel for both sides. Perused the records.

5. During the hearing, the learned counsel for petitioner raised a contention that the property in question is an agricultural land, to which the provisions of the SARFAESI Act are not applicable. The said contention is not maintainable for three reasons. **One**, such a factual assertion is not seen taken in the affidavit of petitioner or in the plaint.

Without a supporting pleading, petitioner cannot take shelter under sec. 31(i) of the 2002 Act which exempts agricultural land from the operation of the said Act. **Second**, the commission report on record reveals that the suit property comprises of a residential building and cattle shed, with the remaining portion mainly improved with small nutmeg trees. For claiming the exemption under sec. 31(i), the property has to be proved to be used as an agricultural land as on the date of creation of security interest. The commission report does not disclose the age of the improvements in the suit property. Only by relying on the said report, it cannot be held that the suit property was an agricultural land as on the date when mortgage was created in favour of the respondent bank. **Third**, the contention of petitioner is that he is the tenant of the residential building and cattle shed in the property sold by him. It is not clearly averred that he has obtained the entire 36.42 Ares sold by him, on lease. It emerges, on the other hand, that he is the tenant only in the respect of the said buildings and the appurtenant land. The description of plaint schedule property, rent agreement dated 12-10-2024 and assertions in the affidavit and plaint point to the same. The petitioner, who claims to be the tenant of residential building and appurtenant land,

cannot be heard to contend that the property is agricultural land, for seeking injunction against eviction from the building in which he is housed.

6. Here, petitioner claims to have entered into an oral lease with the purchasers of 36.42 Ares of land, on 2-3-2019 for a period of 11 months. He further claims that he continued to be a statutory tenant thereafter. Statutory tenancy is a tenancy where the tenant, even after termination of the contractual tenancy, continues to be a tenant with the rights and obligations of a tenant under the Rent Control Act [Please see paragraph no. 54 in judgment of the hon'ble Kerala High Court in *Shiju Mani v. C.S.B. represented by its Authorized Officer*, 2024 (2) KHC 68]. Thus, petitioner has no case of renewal of the first oral lease. Yet, in the lease agreement dated 12-10-2024 executed with the purchasers, it is recited that the petitioner continued to be in possession of the building in the sold property since 2-3-2019 under a lease arrangement.

7. Anyhow, the claim of petitioner is on the strength of tenancy entered into prior to creation of mortgage right over the property. The subsequent lease agreement dated 12-10-2024 does not

appear to be valid since it was executed by Sri. Nithin Venu when he had no manner of right over the property. On 2-3-2023, by way of sale, Sri. Nithin and the other co-owners had alienated the property to Sri. Ujil, as revealed from the copy of sale deed produced by the respondent bank. It was Sri. Ujil who had created security interest over the property. If a valid tenancy is in existence prior to creation of the said security interest, the tenant's possession cannot be disturbed by the secured creditor by taking possession of the property [See *Bajarang Shyamsunder Agarwal v. Central Bank of India and Another*, 2019 KHC 6899]. However, the existence of such a tenancy is a question of fact, which has to be proved by adducing evidence.

8. The question is, whether the prayer of petitioner for an injunction against eviction on the ground of tenancy right in the building in the secured asset, except in accordance with law, is allowable. Sec. 34 of the 2002 Act forbids grant of injunction in respect of any action taken or to be taken in pursuance of power conferred under that Act. The said bar contained in second limb of sec. 34 of the Act has to be read along with the first limb which bars jurisdiction of civil court to entertain any

suit or proceedings in respect of any matter which a D.R.T. is empowered by or under that Act to determine. Sec. 17(4A) of the 2002 Act makes it clear that a person claiming tenancy right upon the secured asset, is also entitled to maintain an application to the D.R.T. under sec. 17(1), if he/ she is aggrieved by the measures taken by the secured creditor under sec. 13(4). The D.R.T. is empowered to pass an appropriate order including restoration of possession, if the tenant satisfies the tribunal that he/ she is entitled to maintain possession until evicted in accordance with the provisions of the Rent Control Act. When that be so, the suit filed by the petitioner for injunction against eviction, is prima facie barred under sec. 34.

9. The learned counsel for petitioner relied on several judgments, one of which is the judgment of the hon'ble Karnataka High Court in *Basavaraju v. Poornima S.R. and another* [2011 KHC 2120]. In that case, the temporary injunction petition filed by the appellant who claimed to be tenant in the secured asset, was dismissed by the civil Court by holding that his remedy is before the D.R.T. The hon'ble High Court also held that the appellant can approach the D.R.T.

10. Another judgment cited by the petitioner is *KHDFC Bank Ltd and Others v. Prestige Educational Trust* [2015 (4) KHC 525] which was rendered by the hon'ble Kerala High Court. There, what was held was that where the property in the suit is not a secured asset, the bar under sec. 34 will not operate. The said case does not apply to the facts of this case since petitioner is only claiming tenancy right in respect of building in the secured asset.

11. Yet another decision is the judgment of the hon'ble Kerala High Court in *Shiju Mani* supra. It was held in paragraph no. 44 of that judgment that the remedy available to a tenant in possession of secured asset against sec. 14 proceedings, is to approach the D.R.T. It was further held in paragraph no. 60 that the power conferred on the D.R.T. include the power to decide the status of a tenant under the R.C. Act and that if the tribunal finds that the lease is falling within the ambit of R.C. Act, it can relegate the parties to the Rent Control Court, for eviction of a tenant.

12. In *Subhulakshmi G. v. UCO Bank, Quilon branch* [2025 KHC Online 833], a division bench of the hon'ble Kerala High Court

held that the protection to the tenant in possession of a secured asset is available under the provisions of the Rent Control Act only if he is lawfully inducted and not to a tenant who was inducted in violation of any provisions of law that make the tenancy illegal. If the tribunal finds that the lease is not lawful or has already terminated, then there is no necessity to relegate the parties to the proceedings under the Rent Control Act. To that extent, the dictum in *Shiju Mani* supra was held to be not good law.

13. There is nothing in *Shiju Mani* supra and *Subhulakshmi* supra that indicates that a civil suit by the tenant against eviction is maintainable. On the other hand, those decisions indicate this that the remedy of a tenant in possession of a secured asset, who is apprehending dispossession under the 2002 Act, is before the D.R.T.

14. The judgment of the hon'ble Bombay High Court in *Assistant General Manager, Stressed Assets Manager, State Bank of India v. Mangala Pannalal Murkya* [2024 KHC Online 5020], as cited by the petitioner, is in the context of a claim for partition of the secured asset, which the D.R.T. is not empowered to adjudicate. In such a

context, the hon'ble Bombay High Court held the suit to be maintainable. The facts in this case being different, the dictum therein cannot be applied here.

15. Petitioner referred to the judgment of the hon'ble Calcutta High Court in *Sandeep Goenka v. Yes Bank Limited* [2025 KHC Online 3314], which again was rendered in the context of a claim of 50% ownership in the property. There, it was held that D.R.T. cannot decide such a claim and hence the civil suit was held to be maintainable. The said dictum has no validity in this case.

16. The last judgment relied by the petitioner is that of the hon'ble Supreme Court in *Central Bank of India v. Prabha Jain* [2025 KHC 6065]. The question in that suit was whether the trial Court was justified in rejecting the plaint which was filed for declaration of nullity of a document, recovery of possession, damages and mesne profits. The hon'ble Supreme Court held that the relief of declaration cannot be granted by the D.R.T. It was further held that even if the third relief is barred by sec. 17(3) of the SARFAESI Act, there cannot be a partial rejection of the plaint. The facts in this case are different. The suit herein

is for injunction against eviction. Though D.R.T. cannot grant a decree for injunction, it can pass an order upholding the right of petitioner to maintain possession of the secured asset until he is evicted under the R.C. Act. The same will be equivalent to an injunction against the bank since the bank cannot thereafter take possession of the property except in accordance with the R.C. Act. Though both the sides argued in detail about the genuinity, legality and bona fides of the claim of petitioner regarding tenancy, they are to be adjudicated by the D.R.T.

17. Hence, this Court holds that the present temporary injunction application is not maintainable in view of the bar contained in sec. 34 of the 2002 Act.

In the result, petition is dismissed.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in the open court on this the 1st day of December, 2025.

Tony T. Thadathil.
JMFC -III Muvattupuzha,
(In Charge of Munsiff)

APPENDIX:- NIL

Munsiff

**ORDER in
I.A. 1/2025 in O.S. 281/2025
Dated: 1.12.2025**