IN THE DEBTS RECOVERY TRIBUNAL-2, KERALA
AT ERNAKULAM

PRESENT: SRI.SOVAN KUMAR DASH
PRESIDING OFFICER

Dated this the 05th day of October,2026

Securitization Application No.590/2025

Between

1. Santhosh Gangadharan,
aged 52 years,
S/o. Late Gangadharan,
Chirakkal House,
Vadasserikara, Pezhumpara P.O.,
Pathanamthitta,
Pin-689 662. …Applicant

And

1. The Kerala State Co-operative- Bank,
Represented by authorized officer,
Head Office at Malappuram,
KGB Towers, AK Road, Malappuram,
Kerala, 676505
Represented by its authorized Officer.

2. The Authorized Officer,
The Kerala Gramin Bank,
Regional Office at Pathanamthitta,
32/250-3, Plakkilethu CGM building,
Churulicode Junction, Pathanamthitta,
Represented by Authorized Officer.

3. Bibinkumar. A.R,
S/O Reveendran Nair,
Alummottil House, Valanchuzhy,
Pathanamthitta P.O. .. Defendants

This Securitization Application having been heard on 15.09.2026 in the presence of Advocate Ashish John representing Advocate V. Philip Mathews for the applicant and Advocate Athin Roy representing Advocate Renjith R for the defendant and stood over to this day for consideration, the Tribunal delivered the following:

F I N A L O R D E R

This SA is filed by the applicant under S.17(1) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as 'the SARFAESI Act') praying to set aside the order passed by the Chief Judicial Magistrate and all the securitization measures taken.

Brief facts of the case:

2.1. The applicant, legal heir of one late Ganadharan, filed this SA claiming that the 3rd defendant availed overdraft loan of Rs.10 lakhs from the defendants and his father stood as a guarantor for the said loan by mortgaging the subject matter property. It is claimed that his father, being an old and illiterate agriculturalist, had no knowledge about such mortgage and the mortgage documents are created fraudulently.

2.2 Father of the applicant filed a complaint at Pathanamthitta police station alleging the fraudulent creation of the documents. He also filed an application before the banking ombudsman. A Writ application was filed before Hon'ble High Court of Kerala bearing WP(c) no.18788/2016 which was disposed by a judgment dated 13.09.2018 holding that the allegation is true. During pendency of the Writ petition, father of the applicant expired.

2.3. Defendants issued a sale notice dated 09.06.2017 and also filed an application bearing M.C No.79/2018 u/s 14 of the SARFAESI Act before Chief Judicial Magistrate, Pathanamthitta to take possession of the secured asset. The applicant claims that all the statutory measures are not duly followed by the defendants.

2.4 The defendants issued a fresh demand notice dated 07.12.2024 followed by issuance of possession notice u/s 13(4) of the SARFAESI Act. The statutory measures in issuing the possession notice were not duly complied. The defendant also filed MC no.343/2025 before Chief Judicial Magistrate Pathanamthitta to take physical possession of the secured asset and the advocate commissioner issued a notice to take possession

of the same. The secured asset is agricultural land exempted under SARFAESI Act. Hence, the applicant claims to set aside the order passed by the Chief Judicial Magistrate and all the securitization measures taken.

3.1. The defendant filed written statement denying the averments and claims *interalia* that father of the applicant late Gangadharan stood as a guarantor to credit facility availed by 3rd defendant by mortgaging his property and deposited the documents of titles in support of creation of equitable mortgage. The letter of evidencing of deposit of Title Deed is also produced.

3.2. Previously, the securitization proceeding was initiated, and the Demand Notice was issued to the guarantor during his life time. But no response was received from the borrower or the guarantor. Hence, MC. No.79/2018 was filed to take physical possession of the secured asset.

3.3 Father of the applicant Late Gangadharan expired on 26.09.2016 and hence, fresh securitization proceeding was initiated, demand notice was issued to his legal heirs, and possession notice was also issued following all the statutory requirements. Being unable to take physical possession of the secured asset, proceeding was initiated before the learned CJM to

take possession of the same. The claim about creation fraudulent documents from his father is legally not sustainable before this Tribunal and in absence of any illegality, SA may be dismissed.

4. From the respective case of the applicant and the defendants, the following points emerge for adjudication in this case:

(i) Whether the securitization proceeding initiated by the defendants suffers from any illegality or irregularity?

(ii) Whether the applicant is entitled to get any relief in this SA?

5. The applicant, being a 3rd party to the loan transaction, has claimed that the fraudulent documents were created in the name of his father showing mortgage of the secured asset. In fact, the property was not mortgaged. Further the applicant claims that the secured asset is agricultural land and hence, the securitization proceeding is not sustainable.

6. On the other hand, the learned counsel for the defendant would contend that the secured asset is not agricultural land and the applicant has never claimed the same at any point of time. Raising such contention after lapse of several years is legally not

entertainable. The father of the applicant created equitable mortgage in respect of the subject matter the property. After receipt of the demand notice he has not raised any objection in proper forum to declare the mortgage as fraudulent. Mere claiming the documents as fraudulent by the applicant without any proof, he cannot be escaped form the liability. It is also contended that the tribunal has also no jurisdiction to consider the said issue.

7. Admittedly, the 3rd defendant availed loan, and the father of the applicant deposited the documents of title with the bank to create security interest for securing the loan. During his lifetime he had not challenged the mortgaged documents in proper forum seeking declaration about fraudulent creation of the mortgaged documents and the applicant has also not raised such plea in any forum after the death of his father.

8. The scope of adjudication of this Tribunal is limited, and it cannot adjudicate whether the mortgage is upon fraudulent transaction. In a judgment reported in **Central Bank of India & another vs. Prabha Jain & others** (2025 INSC 95), cited by the learned counsel for the defendant, the Hon'ble Apex Court held as follows:

"18. Further, the SARFAESI Act *is enacted essentially to provide a speedy mechanism for recovery of debts by banks and financial institutions. The SARFAESI Act has not been enacted for providing a mechanism for adjudicating upon the validity of documents or to determine questions of title finally. The DRT does not have the jurisdiction to grant a declaration with respect to the mortgage deed or the sale deed as sought by the Plaintiff. The jurisdiction to declare a sale deed or a mortgage deed being illegal is vested with the civil court under Section 9 of the Code of Civil Procedure."*

In view of this ratio, this Tribunal has no jurisdiction to adjudicate the claim of the applicant against the mortgaged documents. Hence, such contention of the learned counsel for the applicant is not sustainable.

9. The applicant has also taken a plea that secured asset is agricultural land exempted under SARFAESI Act. No material is placed by the applicant that the secured asset is agricultural land at the time of creation of the mortgage and mere claiming as the secured asset as agricultural land, the property cannot be exempted under SARFAESI Act.

10. The Hon'ble Apex Court in the judgment reported in 2023 KHC 6012 in case of **K.Sreedhar v. M/s.Raus Constructions Pvt. Ltd. & others** has held that:

> "*When it was the case on behalf of the borrowers that in view of Section 31(i) of the SARFAESI Act, the properties were agricultural lands, the same were being exempted from the provisions of the SARFAESI Act, the burden was upon the borrower to prove that the secured properties were agricultural lands and actually being used as agricultural lands and/or agricultural activities were going on.*"

In view of the ratio, the burden to prove the property as agricultural land at the time of availing of loan lies on the claimant seeking exemption of the secured asset u/s 31(i) of the SARFAESI Act. In paragraph 13 of the SA the applicant has specifically stated that he is residing in an old house in portion of the property. The coconut trees, Areca-nuts, plantain etc. are in existence over the remaining portion of the said property. No material is placed by the applicant that at the time of availing the loan the secured asset is exclusively used for cultivation and he had intention to retain the agricultural nature of the property even he has mortgaged the same. No such evidence is placed by the applicant. In absence of the same, the applicant cannot seek any exemption of the secured asset under SARFAESI Act. The applicant has also failed to establish any illegality in the proceeding initiated before Chief Judicial Magistrate to interdict.

In absence of proof of any illegality the applicant is not entitled to get any relief. Hence, both the points are answered against the applicant.

Hence it is ordered: -

ORDER

11. In view of the foregoing reasons, the SA, being devoid of any merit, is hereby dismissed, but in circumstances without cost.

(Dictated to my steno, corrected and pronounced by me in the open Tribunal on this the 05th day of October 2026)

[SOVAN KUMAR DASH]
PRESIDING OFFICER

Documents on the part of the applicant

Annexures	Date	Particulars of documents
Annexure-A1	06.02.2016	True copy of the complaint before banking Ombudsman.
Annexure-A2	10.06.2016	A true copy of the letter from the Banking Ombudsman to late Gangadharan.
Annexure-A3	13.09.2018	A copy of the judgment passed by the Hon'ble High Court of Kerala on WP(C) No. 18788 of 2016.
Annexure-A4	09.06.2017	Copy of the auction sale notice issued by the second defendant.
Annexure-A5	08.01.2018	Copy of the Section 14 petition in M.C 79/2018 filed by second defendant before the Chief Judicial Magistrate Court, Pathanamthitta.
Annexure-A6	15.06.2020	True copy of the receipt regarding acceptance of the complaint filed from Pathanamthitta Police station.
Annexure-A7	01.12.2024	Copy of the demand notice.
Annexure-A8	05.05.2025	Copy of the possession notice.
Annexure-A9	..	A true copy of MC 343/2025 is produced.
Annexure-A10	04.07.2025	A true copy of the order in MC 343/2025.
Annexure-A11	12.08.2025	True copy of the dispossession notice issued by the Advocate Commissioner.

Documents on the part of the defendant nos.1 and 2

Annexure-B(1)	16.10.2014	The true copy of the letter of evidencing of deposit of Title Deed.

PRESIDING OFFICER

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PRESENT: **SRI.SOVAN KUMAR DASH**
PRESIDING OFFICER

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