



2026:KER:31931

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE EASWARAN S.

WEDNESDAY, THE 8TH DAY OF APRIL 2026 / 18TH CHAITHRA, 1948

OP(C) NO. 2628 OF 2023

AGAINST THE ORDER DATED 13.09.2023 IN OS NO.156 OF 2019 OF

MUNSIFF COURT, MANJERI

PETITIONER(S)/PLAINTIFF:

**KERALA GRAMIN BANK
REPRESENTED BY ITS BRACH MANAGER, KONDOTTY
BRANCH, KONDOTTY (P.O), MALAPPURAM DISTRICT.,
PIN - 673638**

**BY ADVS.
SHRI.JAWAHAR JOSE
SHRI.SAFEER BAWA A.S.**

RESPONDENT(S)/DEFENDANTS:

- 1 SAIFUDHEEN. M (DELETED)
AGED 31 YEARS
S/O. LATE MOHAMED KUTTY, RESIDING AT M.M.MANZIL,
KANHIRAPARAMBA, CALICUT AIR PORT (P.O), KONDOTTY
AMSOM, KOLATHUR DESOM, KONDOTTY TALUK,
MALAPPURAM DISTRICT., PIN - 673647**
- 2 SIDDEEK (DELETED)
AGED 48 YEARS
S/O. LATE MOHAMED KUTTY, RESIDING AT M.M.MANZIL,
KANHIRAPARAMBA, CALICUT AIRPORT (P.O), KONDOTTY
AMSOM, KOLATHUR DESOM, KONDOTTY TALUK,
MALAPPURAM DISTRICT., PIN - 673647**



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- 3 **SALMATH (DELETED)**
 AGED 46 YEARS (DELETED)
 D/O. LATE MOHAMED KUTTY, RESIDING AT M.M.MANZIL,
 KANHIRAPARAMBA, CALICUT AIRPORT (P.O), KONDOTTY
 AMSOM, KOLATHUR DESOM, KONDOTTY TALUK,
 MALAPPURAM DISTRICT., PIN - 673647
- 4 **RAIHANATH (DELETED)**
 AGED 44 YEARS
 D/O. LATE MOHAMED KUTTY, RESIDING AT M.M.MANZIL,
 KANHIRAPARAMBA, CALICUT AIRPORT (P.O), KONDOTTY
 AMSOM, KOLATHUR DESOM, KONDOTTY TALUK,
 MALAPPURAM DISTRICT., PIN - 673647
- 5 **SURABHI (DELETED)**
 AGED 39 YEARS
 D/O. LATE MOHAMED KUTTY, RESIDING AT M.M.MANZIL,
 KANHIRAPARAMBA, CALICUT AIRPORT (P.O), KONDOTTY
 AMSOM, KOLATHUR DESOM, KONDOTTY TALUK,
 MALAPPURAM DISTRICT. PIN - 673647
- [R1 TO R5 ARE DELETED FROM THE PARTY ARRAY AT**
 THE RISK OF THE PETITIONER VIDE ORDER DATED
 12/12/2023 IN I.A NO.1/2023]
- 6 **AMINA**
 AGED 64 YEARS
 W/O. LATE MOHAMED KUTTY, RESIDING AT M.M.MANZIL,
 KANHIRAPARAMBA, CALICUT AIRPORT (P.O), KONDOTTY
 AMSOM, KOLATHUR DESOM, KONDOTTY TALUK,
 MALAPPURAM DISTRICT., PIN - 673647

THIS OP (CIVIL) HAVING COME UP FOR ADMISSION ON
08.04.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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“ C.R ”

EASWARAN S., J

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Dated this the 8th day of April, 2026

J U D G M E N T

A short but interesting question has come up for consideration in this Original Petition. What is the stamp duty payable on an ‘Agreement of Hypothecation’ executed by a borrower in respect of a credit facility availed from a bank?

2. The Kerala Gramin Bank has come with this original petition aggrieved by the order of the Munsiff’s Court, Manjeri, in O.S No.156/2019 dated 13.09.2023. The petitioner is the plaintiff in O.S No.156/2019 filed for recovery of an amount of Rs.4,85,500/- together with interest at 13% per annum from 22.03.2019 till realisation and with cost on account of a vehicle loan sanctioned by them in favour of the predecessor in interest of the



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defendants therein. The loan was availed on 22.08.2014 by the predecessor in interest of the defendants by executing various security documents. As the security for the credit facility availed by him, a deed of hypothecation dated 22.08.2014 was executed by which he agreed that the vehicle will stand as a security for the due repayment of the loan. Along with the hypothecation agreement, a guarantee agreement was also executed. The defendants entered appearance and contended that the hypothecation agreement is not properly stamped and therefore cannot be admitted in evidence. This objection was accepted and hypothecation deed dated 22.08.2014 was impounded and the guarantee agreement was accepted in evidence and for further evidence the case was posted to 15.09.2023 and at that point of time this original petition is filed.

3. Heard Shri.Jawahar Jose, the learned Standing Counsel appearing for the petitioner and Shri.Firoz K.M, the learned counsel appearing for the 6th respondent.



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4. Shri.Jawahar Jose, the learned Standing Counsel appearing for the petitioner-Bank contended that the act of the Munsiff's Court in impounding the hypothecation agreement is beyond all known concepts of law. The Munsiff's Court had impounded the same on the ground that, the petitioner should have remitted the stamp duty in terms of Article 6 of the Kerala Stamp Act, 1959 (for short 'the Act'). He further pointed out that since the hypothecation agreement is only a sub-species of a pledge and that the possession of the vehicle remains with the loanee, the hypothecation agreement cannot be construed as a pledge in its strict sense and therefore the Bank need not pay stamp duty in terms of Article 6 of the Act. In support of his contention relied on a Full Bench decision of this Court in **Hindustan Construction Company v. Board of Revenue** [1985 SCC OnLine Ker 74]. He further points out that even going by the decision cited before the trial court by the defendants, the Hon'ble Supreme Court has clearly held that the hypothecation is only a



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sub-species of the pledge and that in the case of hypothecation the possession remains with the owner. In fact, according to the learned counsel for the petitioner, the trial court misread the decision of the Hon'ble Supreme Court in **Infrastructure Leasing and Financial Service Limited v. BPL Limited** [(2015) 3 SCC 363].

5. Per contra, Shri.Firoz K.M., the learned counsel appearing for the 6th respondent contended that, even if deed of hypothecation does not fall within the purview of Article 6 of the Act, necessarily, it must come within Article 37(b) of the Act read with Section 2(n) of the Act, which defines the mortgage. The learned counsel for the 6th respondent further pointed out that, since the hypothecation is only yet another species of a mortgage, even if the possession still vest with the loanee, the Bank is bound to remit the stamp duty in terms of Article 37 of the Act, which in turns relate to the stamp duty as that of a bottomry bond under Article 14 of the Act. He further pointed out that, if the petitioner-Bank refuses to remit the



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stamp duty, necessarily, the hypothecation deed will have to be excluded from the purview of evidence and therefore, the defendants can succeed on that count alone.

6. I have considered the submissions raised across the Bar, perused the impugned order and also the deed of hypothecation.

7. From a reading of Ext.P1 plaint, it is evident that predecessor in interest of the defendants, late Mohamed Kutty, had availed a car loan on 22.08.2014 and that as a security for the said credit facility, had executed a deed of hypothecation, agreement of guarantee and other ancillary documents. A reading of Ext.P3 deed of hypothecation shows that, the Bank had clearly stipulated that in consideration of the Bank sanctioning the term loan, the borrower had agreed to the following terms in the said deed. Therefore, it is evident that Ext.P3 deed of hypothecation is not the basis on which the loan was granted and it merely evidence the fact that a credit facility was sanctioned with various terms and conditions.



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8. It is true that in Ext.P3, the borrower had agreed that the property in question, namely the vehicle, is hypothecated as security for the repayment of the credit facility. Therefore, when the credit facility or the loan is not granted in pursuance to Ext.P3 deed of hypothecation, and that the deed of hypothecation only evidences the sanctioning of the loan and the creation of the security.

9. The trial court held that the deed of hypothecation is insufficiently stamped and that the stamp duty will have to be paid under Article 6. Article 6 of the Kerala Stamp Act, 1959 reads as under:

(1)	(2)	(3)
^{9A}[6.Agreement relating to deposit of title deeds, pawn or pledge, that is to say, any instrument evidencing any agreement relating to-		
(1) the deposit of title deeds or instrument constituting or being evidence of the title to any property whatever (other than a marketable security), where such deposit has been made by way of security for the		0.1 per cent of the amount secured by such deed, subject to a minimum of rupees two hundred and a



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repayment of money advanced or to be advanced by way of loan or an existing or future debt. maximum of rupees ten thousand.

2) the pawn or pledge of movable property where such pawn or pledge has been made by way of security for repayment of money advanced, or to be advanced by way of loan or an existing or future debt. 0.1 per cent of the amount secured by such deed, subject to a minimum of rupees two hundred and a maximum of rupees ten thousand.

[(3) Release, discharge or cancellation of any instrument specified under clause (1) or clause (2) 0.1 per cent of the amount set forth in the instrument subject to a maximum of rupees one thousand.

10. The trial court failed to appreciate the basic difference between a 'pledge' and a 'hypothecation'. It cannot be disputed that 'hypothecation' is a species of 'pledge'. But the essential difference between them is that in case of hypothecation the possession is with the loanee, whereas in the case of a pledge, the pledgee retains the



possession.

11. Article 6 of the Act will get attracted only if the instrument in question is a 'pledge'. On a conspectus reading of the agreement of hypothecation, it is evident that the possession of the vehicle is still with the borrower. If that be so, it passes one's comprehension as to how the deed of hypothecation will qualify as an instrument of pledge.

12. Shri K.M. Firoz, learned counsel for 6th respondent however points out that, even if the agreement of hypothecation does not come within Article 6 of the Act, nevertheless it is chargeable under Article 37 of the Act. This court is unable to subscribe to the argument for multiple reasons.

13. Article 37 of the Act is the charging provision as regards a mortgage deed. It reads as under :-

(1)

(2)

(3)

37.Mortgage deed, not being an agreement relating to deposit of title deeds, pawn or pledge (No.6),



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Bot-tomry Bond (No.14), Mortgage of a crop (No.38), Respondentia Bond (No. 49) or Security Bond (No.50).

(a) When possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given ^{42A}[and not being a mortgage specified in clause (d)]

The same duty as a conveyance (No. 21 or 22 as the case may be) for consideration equal to the amount secured by such deed.*

(b) when possession is not given or agreed to be given as aforesaid ^{42A}[and not being a mortgage specified in clause (d)]

The same duty as a Bottomry Bond (No.14) for the amount secured by such deed.

Explanation:- A mortgagor who gives or has given to the mortgagee a power of attorney to collect rents or gives or has given to the mortgagee a lease of the property mortgaged or part thereof, is deemed to give possession thereof within the meaning of this article.

(c) when a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose where the principal or primary security is duly stamped, for very sum secured not

Five rupees



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exceeding Rs.1000

and for every Rs.1,000 or part thereof secured in excess of Rs.1,000

Five rupees

⁴³[(d) When executed in favour of commercial banks for securing loans

0.5 per cent for the amount secured to a maximum of rupees 20,000.]

Exemption

⁴⁴[1.] Instruments executed by persons taking advances from Government for agricultural purpose or by their sureties as security for the repayment of such advances.

⁴⁴[2. Instruments executed for securing agricultural and educational loans granted by commercial banks]

14. The levy of stamp duty under Article 37 of the Act is attracted only when a loan is advanced and the terms and condition of advancing of the loan is found in the mortgage deed, In other words, the sanction of the loan



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itself should be by the mortgage deed. Therefore, when a credit facility is sanctioned and thereafter an agreement of hypothecation is executed which evidences the creation of security for the purpose of securing the credit facility, the same will not come within the purview of Article 37 of the Kerala Stamp Act, 1959.

15. If Article 6 nor Article 37 of the Act applies, which is the correct article which applies to the Agreement of hypothecation . The correct Article which applies to the deed of hypothecation is Article 5(g) of the Act, which reads as under:-

Sl No.	Description of instrument	Proper stamp duty
(1)	(2)	(3)
5. Agreement or memorandum of an agreement—		
xxxxx	xxxxxx	Xxxx
xxxxx	xxxxxx	xxxxx
	¹⁰ [(g)] if not otherwise provided for.	¹¹ [Two hundred rupees.]

16. The stamp required for an agreement under Article 5(g) of the Act is Rs.100/-, which was later amended



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with effect from 01.04.2015 as Rs.200/-. In Ext.P3, an adhesive stamp for Rs.100/- is affixed and therefore it is a properly stamped document in terms of Article 5(g) of the Act. Hence, the proceedings dated 13.09.2023 impounding the agreement of hypothecation cannot be sustained and accordingly the same is liable to be interfered in exercise of the powers under Article 227 of the Constitution of India. Accordingly, this original petition is allowed and proceedings dated 13.09.2023, impounding the agreement of hypothecation dated 22.08.2014 is set aside. The Munsiff's Court, Manjeri, is directed to receive the agreement of hypothecation in evidence and proceed with the trial of the suit in accordance with law.

Ordered accordingly.

Sd/-
EASWARAN S.
JUDGE

AMR



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APPENDIX OF OP(C) NO. 2628 OF 2023

PETITIONER'S EXHIBITS

- | | |
|--------------------|---|
| Exhibit-P1 | TRUE COPY OF THE PLAINT IN O.S. NO.156/2019 OF THE HON'BLE MUNSIFF'S COURT, MANJERI. |
| Exhibit -P2 | TRUE COPY OF THE WRITTEN STATEMENT IN O.S. NO.156/2019 OF THE HON'BLE MUNSIFF'S COURT, MANJERI. |
| Exhibit-P3 | TRUE COPY OF THE HYPOTHECATION DEED DATED 22-8-2014 |
| Exhibit-P4 | CERTIFIED COPY OF THE ORDER DATED 13-9-2023 IN O.S. NO.156/2019 OF THE HON'BLE MUNSIFF'S COURT, MANJERI. |