Procedural mechanism to lift an encumbrance from an immovable property under Section 57 of the Transfer of Property Act 1882 (TPA).

The object behind Section 57 of the TP Act is indisputable from its tenor that it is proposed to help any gathering to the offer of a resolute property, which is dependent upon an encumbrance, to fructify the deal for its reasonable worth in the wake of getting in store – for installment to the encumbrancer – the promoted worth of the periodical charge, or the capital entirety charged on the property, together with accidental charges. It subsequently empowers the gatherings to a deal to conjure the locale of the court to satisfy their contracts, despite the encumbrances on the property. The judgement passed by the Kerala High Court (High Court), in its decision in **MP Varghese v Annamma Yacob & Ors (MFA No 47/2020)** by *Hon’ble shri Justice Devan Ramachandran*

The facts of the case were such that the appellant and the subsequent respondent were kin who had gotten the property of their father through an enlisted partition deed in 1980 (Partition Deed). The Partition Deed contained an agreement that both the brothers should pay an amount of INR 500 each to their sister, that is, the principal respondent, inside one year of the Partition Deed, bombing which the primary respondent was permitted to recuperate it, for which reason, the said sums would stand charged on the separate properties of the appellant and the subsequent respondent. While the primary respondent acknowledged the installment from the subsequent respondent, she would not acknowledge installment from the appellant because of her own reasons, because of which the property assigned to him under the Partition Deed (Appellant's Property) was as yet troubled with this commitment.

The appellant had moved to the District Court, Ernakulam (District Court) under Section 57 for affecting the deal liberated from encumbrance. The District Court refused the appellant's supplication for release of encumbrance on the Appellant's Property holding it to be not viable.

The appellant council argued that Section 57 of the TPA applied to 'out of court' sales as well, that is, sale transaction which are not arranged by the court, as is showed by the utilization of the words 'or out of court' in Section 57(a) of the TPA.

The council of respondent presented that Section 57 of the TPA couldn't make a difference to out of court deals and the appellant should release the obligation as per the provisions of Chapter IV of the TPA which manages home loans of steadfast properties and charges

The High Court, while examining Section 57 of the TPA meticulously from both its academic and practical ambits described it as “*a very efficacious, substantive and procedural mechanism to facilitate the realization of the deserving and intrinsic value of encumbered estates and other immovable properties*

The High Court further struck down the wrong understanding by the District Court to the degree that the Section 57 can be conjured solely after the sale is finished and rather explained unequivocally that help of the court can be looked for even while the sale is proposed.

TheHigh Court allowed the *appeal and set aside the impugned order of the District Court, consequently, permitting the appellant to tender the amount of INR 500 to the first respondent, by depositing it in the District Court; in which event, the same will be entitled to be withdrawn by her*. The High Court further declared that *on such payment by the appellant, the Appellant's Property will stand freed from the charge on it, created in pursuance of the terms of the Partition Deed*.