**Court can declare a property free of encumbrance against the will of encumbrancer: Kerala High Court**

Exceptional nature of the legal issues presented in this appeal, I make or order as to costs and direct the parties to suffer their respective costs. The Hon’ble high court at Kerala in **MR Varghese vs. Annamma Yacob & Ors. [MFA. No. 47 of 202])** held that section 57 of the Transfer of Property Act, 1882 permits that court to declare a property without any encumbrance.

The order passed by **Hon’ble Justice Devan Ramachandran** is particularly relevant since there is no case law/precedent on this subject explaining the procedural mechanism u/s 57 of the Act which provides for lifting encumbrance from an immovable property.

 The Hon’ble court clarified that S. 57 of the act was enacted to assist any party to the sale of an immovable property, which is subjected to an encumbrance, to fructify the sale for its fair value. The Hon’ble high court placed reliance on the ruling of an English court in ***Wilberforce V. Wilberforce, (1915, 1 Ch 94)*** and observed that “Section 57 of the TPA is wider in its amplitude than S. 83 or Order XXXIV Rule 2 of the CPC, since it permits the court to declare a property free of encumbrance even against the will of the encumbrancer and even in the case of sales not directed by Order XXXIV of the CPC”

The Court further clarified that S/ 57 provides for sale of immovable property, both by a court or out of court as also in execution of a decree and held that “Section 57 also provides that in case of sale of immovable property subjected to an encumbrance being sold by a court, or in execution of a decree or out of court any party to it can apply for a declaration that the said property is free of such; in which event, the appropriate court may direct or allow payment, sufficient to meet the encumbrance on the property, into court”. Court has allowed this appeal and set aside the impugned order of the learned District Judge; consequently, permitting the appellant to tender the amount of Rs.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to the first respondent, by depositing it in the District Court; in which event, the same will be entitled to be withdrawn by her. It is, resultantly, declared that on such payment by the appellant, the petition schedule property will stand freed from the charge on it, created as per the terms of the Partition Deed, Document No.1873/1980 of the Puthencruz SRO.