

Spl. Tahsildar Vs. Vasu

Spl. Tahsildar Vs. Vasu

SooperKanoon Citation : sooperkanoon.com/728695

Court : Kerala

Decided On : Aug-24-2006

Reported in : 2006(4)KLT557

Judge : Kurian Joseph and; K.T. Sankaran, JJ.

Acts : [Kerala Revenue Recovery Act, 1968](#) - Sections 2, 7, 36, 44, 68(1) and 72

Appeal No. : A.S. No. 704 of 1994

Appellant : Spl. Tahsildar

Respondent : Vasu

Advocate for Def. : P.B. Asokan,; George C. Varghese, K.C. Binoj and; Tony M

Advocate for Pet/Ap. : S. Dileep, Government Pleader

Judgement :

Kurian Joseph, J.

1. This appeal arises from the decree and judgment dated 30.3.1994 in O.S. No. 485/1992 on the file of the Sub Court, Ernakulam. Appellants are defendants 1 and 2 and respondents are the plaintiff and the 3rd defendant respectively. The suit is one for declaration and injunction. According to the plaintiff he purchased the plaint schedule property for a total consideration of Rs. 75,000/- by sale deed

No. 806/1990 of Maradu Sub Registry from the 3rd defendant. He was served with revenue recovery notice dated 7.2.1992 calling upon him to pay an amount of Rs. 1,00,000/- with interest failing which the plaint schedule property would be proceeded against. The recovery is for realisation of customs penalty due from the 3rd defendant, the vendor. The appellants (defendants 1 and 2) contended that notice under Section 7 of the Kerala Revenue Recovery Act had already been served on the defaulter, 3rd defendant, as early as on 19.8.1985 and hence the sale is hit by Section 44 of the Kerala Revenue Recovery Act. It was also contended that notice under Section 36 had also been served on the 3rd defendant and finally it was contended that the suit itself was not maintainable in view of the specific bar under Section 72 of the Kerala Revenue Recovery Act. The Court below framed issues in terms of the relief claimed in the plaint including the one on maintainability.

2. Though there is a specific bar on the civil court under Section 72, it was held that the plaintiff is not a representative of the defaulter, the 3rd defendant. It was also held that the plaintiff was not claiming any right through the 3rd defendant. Still further it was held that whether the purchase of the property by the plaintiff from the 3rd defendant, who admittedly is the defaulter, is with intention to defeat the right of the State is to be determined by the civil court. We are afraid the approach of the court below cannot be appreciated. Section 72 of the [Kerala Revenue Recovery Act, 1968](#) reads as follows:

72. General bar to jurisdiction of Civil Courts have where fraud alleged.--Except as otherwise expressly provided in this Act, every question arising between the Collector or the Authorised Officer and the defaulter or his representative or any other person claiming any right through the defaulter, relating to the execution, discharge or satisfaction of a written demand issued under this Act or relating to the confirmation or setting aside by an order under this act of a sale held in execution of such demand, shall be determined not by suit, but by order of-

(i) the Board of Revenue, where the Collector is a party to the question;

(ii) the Collector, in other cases;

Provided that a suit may be brought in a Civil Court in respect of any such question on the ground of fraud.

It is crystal clear that any question relating to execution, discharge or satisfaction of a demand under the Act, arising between the Collector or the Authorised Officer and the defaulter or his representative or any other person claiming any right through the defaulter is outside the purview of adjudication by the civil court. Those are matters to be considered either by the District Collector or by the Board of Revenue. Apparently the plaintiff is aware of the position and hence only he had approached the Government and the Government, as a matter of fact, had stayed the recovery proceedings as noted by the court below, by Order No. 22776/S1/92/RD dated 15.4.1992.

3. Admittedly the plaintiff purchased the property from the 3rd defendant, after he became a defaulter. Defaulter is defined under Section 2(e) as 'a person from whom an arrear of public revenue due on land is due, ...'. It is the contention of the respondent/plaintiff that dues to the customs is not public revenue due on land. Public revenue due on land is defined under Section 2(j) of the Act to mean '...the land revenue charge on the land and includes all other taxes, fees and cesses on land, whether charged on land or not and all cesses or other dues payable to the Government on account of water used for purposes of irrigation'. Under Section 68(1) of the Act...other dues payable by any person to the Government' are liable to be recovered under the Act. It is significant in this context to note that the 3rd defendant vendor has indemnified the plaintiff in Ext. A1 sale deed. There is no case for the plaintiff that the recovery is on account of any fraud on the part of the defendants. The only situation where a suit is maintainable challenging the revenue recovery under the provisions of the Kerala Revenue Recovery Act is where a question of fraud is involved. As the plaintiff has no such case, the suit is not maintainable.

4. Though the appellant is entitled to succeed on that ground alone, since contentions on merits are also taken, we may refer to the same. Section 44 of the Act reads as follows:

44. Effect of engagements and transfers by the defaulter.-

(1) Any engagement entered into by the defaulter with any one in respect of any immovable property after the service of the written demand on him shall not be binding upon the Government.

(2) Any transfer of immovable property made by a defaulter after public revenue due on any land from him has fallen in arrear with intent to defeat or delay the recovery of such arrear, shall not be binding upon the Government.

(3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from him has fallen in arrear, it shall be presumed until the contrary is proved, that such transfer is made with intent to defeat or delay the recovery of such arrear, and the Collector or the authorised officer may, subject to the order of a competent Court, proceed to recover such arrear of public revenue by attachment and sale of the property so transferred, as if such transfer has not taken place;

Provided that, before proceeding to attach such property, the Collector or the authorized officer shall

(i) give the defaulter an opportunity of being heard; and

(ii) record his reasons therefore in writing

Explanation.--For the purpose of this section, 'near relative' includes husband, wife, father, mother, brother, sister, son, daughter, step son, step daughter, uncle, aunt, son-in-law, daughter-in-law, brother-in-law, nephew or niece of the transferor.

It needs no elaborate discussion to hold that transfer of an immovable property after service of notice with intent to delay or defeat the recovery under the Act is not binding on the Government. In other words, de hors such a transfer, the State is entitled to proceed against the property thus transferred after the service of notice under the Kerala Revenue Recovery Act on the defaulter. Ext.B2 is the copy of the demand notice issued under Section 7 to the 3rd defendant. Ext.B2 is dated 5.1.1984. True no inventory of the property is entered in Ext.B2. The question is whether at the stage of issuance of Section 7 notice, there should be

the details of the property in the notice. A bare reading of Section 44 would show that even if the inventory of the property is not mentioned in the notice, in case there is any engagement by the defaulter with any one in respect of his immovable property after the service of written demand or any calculated transfer of the immovable property after the service of notice, the same is not binding on the Government. The whole stress is on the demand made by the Government on the defaulter. That demand has already been served in 1984 on the defaulter, the 3rd defendant, from whom the plaintiff purchased the property in 1990. The purchase by the plaintiff is as per Ext.A1 dated 28.3.1990. Therefore, the stand taken by the court below that for want of Inventory of the immovable property in the demand notice served on the defaulter, the transfer is not hit by Section 44 is not correct. It is also to be stated that there need not be any attachment sq as to attract the wrath of Section 44. If the transfer is after service of demand under the Act and with intent to delay or defeat the recovery the same is not binding on the State. Hence merely because there was no attachment, the transfer of an immovable property by the defaulter after service of a demand for the dues, will not be safe.

5. Thus on both contentions the appellants are entitled to succeed, that is, the suit is not maintainable under Section 72 and that the transfer of the property by the defaulter after service of a demand under the Act is liable to be hit by Section 44 of the Act. The judgment and decree of the Court below are set aside and the suit is dismissed. However, we make it clear that this judgment shall not stand in the way of the first respondent-plaintiff taking recourse to his remedies under the Kerala Revenue Recovery Act or instituting appropriate proceedings against the second respondent.