(2024) 01 KL CK 0174

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6501 Of 2015

Joy APPELLANT

Vs

State Of Kerala RESPONDENT

Date of Decision : 23-01-2024

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 7, 34, 44(2), 44(3), 83(1)

Citation : (2024) 01 KL CK 0174

Hon'ble Judges : Gopinath P., J

Bench : Single Bench

Advocate : G.Sreekumar, Venugopal V

Final Decision : Disposed Of

Judgement

Gopinath P., J

1. The petitioner has approached this court challenging Ext.P4 order of the Land Revenue Commissioner in a revision petition filed under Section 83(1) of the Kerala Revenue Recovery Act (In short 'the RR Act'). The brief facts of the case that as per the requisition received from the Deputy Commissioner, Commercial Taxes, Thirunelveli for realizing an amount of Rs.7,12,712/- along with interest from the petitioner, the Tahsildar (RR), Thrissur initiated proceedings for recovery of the said amount. Notices under Sections 7 and 34 of the RR Act was served on the petitioner on 19-07-2000 and 15-11-2000 respectively. However, he failed to remit the amount and steps were taken to sell properties belonging to the petitioner in Sy. No.605/3, 5, 7 of Chembukavu Village. The petitioner objected to the revenue recovery proceedings stating that even before the revenue recovery proceedings were initiated, extent of the property upon which the petitioner had interest was also settled in favour of his wife. It is also stated that the petitioner's wife had thereafter sold the entire property to third parties. It is submitted that the revenue recovery proceedings against the entirety of the property is therefore not sustainable. It is submitted that even if there was a finding the transfer of the property by the petitioner in favour of his wife was

fraudulent and was hit by the provisions of Section 44 (2) of the RR Act, proceedings could be continued only in respect of one-half of the property and not in respect of the entirety of the property. In order to establish that the property belong to the petitioner and his wife in equal shares, the learned counsel for the petitioner has placed reliance on Ext.P2 document registered at SRO Thrissur on 25-11-1986. The Land Revenue Commissioner considered the objections taken by the petitioner and while disposing of the revision petition filed against the order dated 27-04-2014 of the District Collector, Thrissur repelled the contentions taken by the petitioner, prompting the petitioner to approach this court by filing the above writ petition.

2. The learned Government Pleader opposes the grant of any relief to the petitioner. It is submitted that the requisition by the Commercial Tax authorities of Tamil Nadu State, which led to the initiation of recovery proceedings was issued on 15-05-1997. It is submitted that the petitioner had fraudulently settled his share in the property covered by Ext.P2 document in favour of his wife on 27-05-2000. It is submitted that the transfer is therefore clearly hit by the provisions of Section 44 (2) and (3) of the RR Act. It is submitted that there is absolutely no illegality in the order of the Land Revenue Commissioner and petitioner is not entitled to any relief in this writ petition.

3. Having heard the learned counsel appearing for the petitioner, learned Government Pleader, I am of the view that the petitioner is entitled to succeed in part. The property against which the revenue recovery proceedings were initiated belonged jointly to the petitioner and his wife in terms of Ext.P2 document registered at SRO, Thrissur on 25-11-1986. The liability in respect of which the revenue recovery proceedings were initiated is the liability of the petitioner alone. Therefore even it were to be held that the settlement executed on 27-05-2000 by the petitioner in favour of his wife (Ext.P3) is hit by the provisions of Section 44 (2) and (3) of the RR Act, it cannot be held that the entire property could be proceeded against for recovery of the amounts due. In other words the revenue recovery proceedings could have continued only against the extent of interest that the petitioner had in the property covered by Ext.P2 document. Coming to the validity of Ext.P3 settlement it has to be held that since the settlement was after the date on which the requisition was given by the Commercial Taxes Department of the State of Tamil Nadu and after the amount was sought to be recovered in terms of the provisions contained in the RR Act it has to be held that the Ext.P3 document was hit by the provisions of sub-section (2) and (3) of Section 44 of the RR Act. Sub-sections (2) and (3) of Section 44 of the RR Act, 1968 reads as follows;

“(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 had not taken place:”

Since the revenue recovery proceedings by the Commercial Taxes Department of Tamil Nadu were initiated in the year 1997 and since Ext.P3 document executed in the year 2000, Ext.P3 document is clearly hit by the provisions of Section 44 (2) and (3) of the RR Act, 1968. In the light of the aforesaid findings, this writ petition will stand disposed of directing that the revenue recovery proceedings which are impugned may continue against the share of the property belonging to the petitioner in terms of Ext.P2 document notwithstanding its transfer by Ext.P3 document to the wife of the petitioner and any subsequent transfer by the wife of the petitioner to any third party. The revenue recovery proceedings against the share of the property covered by Ext.P2 document to the extent it belongs to the wife of the petitioner is found to be bad. Writ petition is ordered accordingly.

