
(1978) 11 KL CK 0006
In the High Court Of Kerala

Karthiayani Sreemathi and Others

APPELLANT

Vs

Dt. Collector and Others

RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

Succession Act, 1925 — Section 306

Transfer of Property Act, 1882 — Section 53

Citation : (1979) 2 LLJ 248

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiyar, C.J.—These O.Ps. were referred to a Division Bench by our learned brother Chandrasekara Menon, J., in an elaborated order of reference running nearly to ten typed pages, as the learned Judge felt that the questions raised are not only of interest in an academic sense but also of great importance. The question itself as stated shortly by the learned Judge is whether the legal representatives of the deceased employer would fall within the definition of the term "employer" in Section 2(c) of the Kerala Toddy Workers Welfare Fund Act and of the term "defaulter" in Section 2(e) of the Kerala Revenue Recovery Act, 1968, read with Section 68 of the said Act. We shall notice the facts first in O.P. No. 4816 of 1976 in which the main arguments were advanced. Counsel in the other writ petition practically associated himself with the said arguments.

O.P. No. 4816 of 1976

2. The four writ petitioners are the daughters of one Krishnan Padmanabhan, an abkari contractor who died on 11.11.1972. Besides the petitioners, the deceased had a son Sridharan and another daughter Karthiayani Ratnamma. The deceased had bid toddy shops No. 13 (sic)Adoor and T.S. No. 14 in Thuvayur and T.S. No. 15 in Ezhamkulum in Kunnathur range, T.S. No. 8 in Chittoor in Karunagappally range, and T.S. No. 8 in Pulamon in Kottarakara range. He was conducting these shops till his death, and thereafter the business is being continued by his only son Sridharan. The petitioners alleged that they had

nothing to do with the business. By document No. 863/1972 of the Chavara Sub Registrar's Office dated 19.3.1972, Krishnan Padmanabhan and the members of his family partitioned the properties. On the date of his death, an extent of 1 acre 71 cents of land stood in the name of the deceased Padmanabhan. Out of this, 35 cents are stated to have been acquired for the National High Way as evidenced by Ext. P1 notice. In a partition suit O.S. No. 60 of 1974. Sub Court Quilon, the estate of the deceased was directed to be partitioned by a preliminary decree dated 30.9.1975. Final decree is awaited. Meanwhile the Welfare Fund Inspector, Quilon initiated proceedings for determination of the amount payable under Section. 8 of the Kerala Toddy Workers Welfare Fund Act, 1969 for the shops bid by deceased Padmanabhan for the period during which the deceased was conducting the shops. The legal heirs of the deceased were summoned to appear. The petitioners appeared and contested their liability. But the Inspector determined the amount of contribution and the balance amount due for each of the shops and passed Exts. P2 to P6 assessment orders making the heirs jointly and severally liable. These were on dates ranging between 10.11.1975 and 17.3.1976. In pursuance of these orders revenue recovery proceedings by attachment of movables were initiated for the recovery of the amount assessed. Apprehending further action the petitioners filed a writ petition attacking the revenue recovery proceedings as without jurisdiction and prayed for a writ of prohibition forbidding respondents from taking any steps under the Toddy Workers Welfare Fund Act and the Kerala Revenue Recovery Act to collect the contribution to the welfare fund from the petitioners for the toddy shops conducted by the deceased Padmanabhan; and for certiorari to quash Exts. P2 to P6 orders. A detailed counter-affidavit has been filed by the District Collector, Quilon and the 1st respondent. Paragraph 2 of the counter-affidavit has stated in a tabular form the various amounts which were advised for recovery against the deceased Padmanabhan for arrears of abkari revenue, The amount includes arrears towards the toddy workers welfare fund. The total amount advised for recovery was Rs. 80,077.30. Out of this an amount of Rs. 59,643.84 was collected, The counter-affidavits states that for realisation of the arrears demand notices were issued to the defaulter on 18.7.1969, 26.7.1969, 25.7.1970, 28.7.1970, 11.11.1971, 8.12.1971, 28.12.1971 & 24.12.1971, to recover items shown in the tabular statement. Notice under Sections 34 and 36 of the Kerala Revenue Recovery Act are also stated to have been served on the late Sri Padmanabhan on 22.7.1969 and 24.9.1969. Notice of attachment u/s 36 was published in the Gazette dated 16.9.1969. After all these formalities, 5 acres and 55.855 cents of land of the defaulter in Karunagappally Taluk were attached under the Revenue Recovery Act, 1968. In addition, 95 cents of land in Sy. Nos. 610/7, 610/8 and 610/178 in Adoor Village, were also attached for the realisation of arrears. Notice u/s 34 of the Revenue Recovery Act was served on the legal heirs of the defaulter and they remitted Rs. 2,000 towards the arrears due; but did not pay up the balance. One of them filed O.P. 485 of 1976 to quash the Revenue Recovery Proceedings. In paragraph 3 of the counter-affidavit, it is stated that the Welfare Fund Inspector took action to realise the amounts u/s 9

of the Act and the certificates were issued by the Collector on the basis of the requisition from the Welfare Fund Inspector. The counter-affidavit has stated that the partition referred to by the petitioners was effected after the demand notice under Sections 34 and 36 of the Revenue Recovery Act. (The implication probably is that the same would not bind the Government u/s 44 of the Act). The rest of the averments in the counter-affidavit will be referred to, if necessary, at the appropriate stage.

3. The contentions urged by the counsel for the petitioners are that the legal representatives of the deceased Krishnan Padmanabhan would not satisfy the definition of "employer" u/s 2(c) of the Toddy Workers Welfare Fund Act, 1969, and the amount due from the deceased Padmanabhan cannot be recovered from the legal representatives; nor would the legal representatives fall within the term "defaulter" as defined in Section 2(e) of the Revenue Recovery Act, and for that reason again, the recovery proceedings taken against them should fail. It was also contended that the properties conveyed to the petitioners under the partition of 19.3.1972 cannot be proceeded against for arrears due from Krishnan Padmanabhan.

4. Section 2(c) of the Kerala Toddy Workers Welfare Fund Act, 1969 defines "employer" as follows:

2(c). "employer" means any person who employs, whether directly or through another person, or whether on behalf of himself or any other person, one or more employees and includes any person who has a licence for the manufacture, distribution or sale of toddy under the Abkari Act for the time being in force:

Under Section 3 of the Act, the Government may, by notification frame a scheme to establish a fund for employees in accordance with the provisions of the Act and the scheme. The scheme may provide for any of the matters specified in the Schedule. u/s 4, the contribution which shall be paid by the employer to the fund, shall be 8 % of the wages for the time being payable to the employees. In addition to this contribution, the employer is also liable to contribute to the fund as gratuity, an amount equal to 50% of the wages. u/s 8, the Chief Welfare Fund Inspector or other authorised Officer may, by order, determine the amount due from any employer under the provisions of this Act, or of the scheme, after conducting such enquiry as he deems necessary. u/s 9, any amount due from the employer in pursuance of the provisions of the Act or the scheme may be recovered in the same manner as arrear of land revenue. Turning to the provisions of the Scheme, we may note Clause (35) (Chapter V) which provides for the duty of the employer to file returns; and of Clause (38) which lays an obligation on the employer to pay contribution within five days of the close of every month. Under Clause 78 of the scheme, if any amount due from an employer under the scheme, is in arrears, the Chief Welfare Fund-Inspector is to ascertain the amount after due enquiry and issue a certificate to the Collector of the concerned District who shall thereafter proceed to recover the amount in the same manner as an arrear of land revenue. These are the relevant statutory

provisions to be noticed in the present case. Exhibits P2 to P6 are orders passed under the provisions of Sections 8 and 9 of the Act; and certificates had been forwarded u/s 78 of the scheme. We have drawn attention to the relevant paragraphs of the counter-affidavit where reference has been made to the relevant facts.

On the facts disclosed, there appears very little for the discussion of the law. Counsel placed reliance on the decision of the Supreme Court in Chogmal Bhandari and Others Vs. Deputy Commercial Tax Officer, II Division, Kurnool, and contended that without avoiding or setting aside the partition or the transactions by which title had become vested in the petitioners, the coercive processes cannot be set in motion against them or their assets. Support for the position was sought to be derived from a decision of one of us (myself) in Janaki v. State of Kerala (1976) KLT 182. It was further contended that the contrary view or principle in the decision of a Division Bench of this Court in Isha Beevi v. Tax Recovery Officer Quilon (1970) K.L.T.744 and of two other Division Benches following the same, viz., Devi and Ors. v. State of Kerala (1977) KLT 781 and District Collector Kozhikode v. Kunhi Ayisia Umma (1978) KLT 77, was not correct and required reconsideration.

5. To appreciate contentions thus urged we may briefly refer to the relevant provision of the Kerala Revenue Recovery Act.

Section 2(e) defines "defaulter" as:

"defaulter" means a person from whom an arrear of public revenue due on land is due, and includes a person who is responsible as surety for the payment of any such arrear.

Section 2(g) defines "landlord" as:

"land-holder" means the registered holder for the time being of any land and includes his legal representatives and assigns and any person who, under the law for the time being in force, is liable for the payment of the public revenue due on the land held by him.

Section 7 provides for attachment and sale of movable property. This has to be preceded by a demand in writing containing the name of the defaulter the amount of the arrear and other particulars. Section 34 provides for attachment of immovable property. This again is to be preceded by a written demand to be served on the defaulter showing the relevant particulars. There is provision for the defaulter to file objection and for the Collector to enquire into the same. Section 36 provides for attachment. Section 49 provides for sale of immovable property attached; and Section 68(1) reads:

68. Application of the Act for the recovery of certain other dues to Government:

(1) All sums due to the Government on account of quit rent or revenue other than public revenue due on land;

All moneys due from any person to the Government which under a written agreement executed by such person are recoverable as arrears of public revenue due on land or land revenue, and all specific pecuniary penalties to which such person renders himself liable under such agreement or contract;

all sums declared by any other law for the time being in force to be recoverable as arrear of public revenue due on land or land revenue; and

all fees and other dues payable by any person to the Government, may be recovered under the provisions of this Act.

In Kochunarayanans case (1962) K.L.J. 951, Madhavan Nair, J. referred to Sections 5 to 41 of the Travancore Revenue Recovery Act I of 1968 (See Section 5 of the present Act) and observed: that the provisions of the Act indicated that the property proceeded against must be the property of the "defaulter". The learned Judge then observes:

6. The word "defaulter" was not defined in the Act, but has been denned in the Travancore-Cochin Revenue Recovery Act (VII of 1951) as meaning "a person from whom an arrear of public revenue is due, and includes a person who is responsible as surety for the payment of any such arrear of revenue". This definition, being in accordance with the ordinary sense of the word in common parlance, may be deemed to indicate the meaning in the old Act also. The defaulters then are primarily the landholders. u/s 1(c) of the Act:

Landholder means the registered holder for the time being of any land, and includes his legal representatives.

It follows that a defaulter is the person entered in the thandaper as the landholder or his legal representatives. In the context of this case, the defaulters were Marthandan Raman, Kunju Kalyani and the legal representatives of the deceased Narayanan Parameswaran.

The Kerala Revenue Recovery Act also defines landholder in the same terms in Section 2(g). In Janaki v. State of Kerala (1976) KLT 182, the argument was advanced before one of us (myself) that revenue recovery proceedings cannot be taken against the legal representatives of the defaulter under the Revenue Recovery Act. It was observed:

4. The argument, to my mind, ignore the concept of a legal representative, that, in law he is not a different person from the deceased, but only continues the persona of the deceased. The counter-affidavit in paragraph 3 stated that the petitioner's husband had executed the necessary agreements but had defaulted payment of kist for the shop, and hence the shop was under departmental management, and a sum of Rs. 11,551.27 was due from him on 1.4.1969. Together with future interest, Revenue Recovery proceedings were taken out in respect of this amount. I do not see any flaw or infirmity in the proceedings thus started.

The principle was further followed by a Division Bench of which one of us (myself) was a member in *Devi and others v. State of Kerala* (1977) KLT 781 Referring to decision of Madhavan Nair, J., in *Kochunarayanan's case* (1962) K.L.J. 951, it was observed:

We may point out that Section 2 Clause (g) of the Kerala Revenue Recovery Act contains similar, if not identical, provision as Section 1(c) of the Travancore Revenue Recovery Act. The reasoning of our learned brother Madhavan Nair, J., therefore, applies with full force to the case on hand.

In the Reference Order of our learned brother Chandrasekhara Menon, J., it was stated that the learned Judge had no doubt that the legal representatives would be liable for the arrears of their predecessor to the extent of the assets derived by them from the deceased; but the learned Judge posed the question:

But the question is can the provisions of the Revenue Recovery Act be set in motion against his legal representatives, especially when there has been no determination of the quantum of assets of the deceased which each heir of his might have received or enjoyed.

The learned Judge noted the decisions in *Kochunarayanan v. Janaki Amma and Ors.* (1962) K.L.J. 951, *Devi and Ors. v. State of Kerala* (1977) KLT 781 and *Janaki v. State of Kerala* (1976) KLT 182 and then entered into discussion of the provisions of Section 306 of the Indian Succession Act, and the underlying principle of the English Law regarding the primary meaning of the term "legal representative", and posed the questions whether the legal representatives are liable to be proceeded against in a summary fashion or by way of arrest, and whether, apart from representing the estate they can be said, in law, to continue the persona of the deceased. After the said discussion the learned Judge expressed that it was difficult to state that the word "employer" in the Toddy Workers Welfare Fund Act or "defaulter" in the Revenue Recovery Act would take in legal representative of the employer or defaulter. Being of the view that the scope and the ambit of the principle had to be precisely stated, the learned Judge referred the case to a Division Bench. We note that the learned Judge had posed the question whether the coercive process could be put in motion against a legal representative when he had not come by any assets, and whether the process of recovery should not be confined to the assets in the hands of the legal representatives.

6. We feel, with respect, that many of the questions posed and discussed by the learned Judge in the referring judgment do not arise for consideration on the facts disclosed, which we have set out in full. We do not wish to enter the region of academic discussion. Out of deference to the learned Judge, we shall discuss a few of the aspects noticed in the referring judgment.

7. In the first place, we may note that the inheritance of assets or succession to property is not necessary to constitute a person a "legal representative" in the eye of the law (vide *Pyli. Varghese* AIR 1956 T.C. 1478 F.B. It is a different

matter altogether that no action can be taken for want of assets. No such complication, however, arises on the facts of the present case, and we need not labour the point further.

8. On the status and the position in law of the legal representative, we would refer to the following: passage from Salmond's Jurisprudence 12th Edition, Page 120:

The rights which a dead man thus leaves behind him vest in his representative. They pass to some person whom the dead man, or the law on his behalf, has appointed to represent him in the world of the living. This representative bears the person of the deceased, and, therefore, has vested in him all the inheritable rights, and has imposed upon him all the inheritable liabilities of the deceased. Inheritance is in some sort a legal and fictitious continuation of the personality of the dead man, for the representative is in some sort identified by the law with him whom he represents. The rights which the dead man can no longer own or exercise in propria persona, and the obligations which he can no longer in propria persona fulfill, he owns, exercises and fulfils in the person of a living substitute. To this extent, and in this fashion, it may be said that the legal personality of a man survives his natural personality, until, his obligations being duly performed, and his property duly disposed of, his representation among the living is no longer called for.

9. We may also refer to the decision of the Supreme Court in *The Andhra Bank Ltd. Vs. R. Srinivasan and Others*, , para 16, where occurs the following observations:

16. Going back to the narrow point which calls for our decision in the present appeal we are inclined to hold that there is no scope for the application of the rule of private international law to a case where the suit as initially filed was competent and the Court before which it was filed had jurisdiction to try it. In such a case if one of the defendants dies and his legal representatives happen to be non-resident foreigners the procedural step taken to bring them on the record is intended to enable them to defend the suit in their character as legal representatives and on behalf of the deceased defendant and so the jurisdiction of the Court continues unaffected and the competence of the suit as originally filed remains unimpaired. In form it is a personal action against the legal representatives but in substance it is an action continued against them as legal representatives in which the extent of their liability is ultimately decided by the extent of the assets of the deceased as held by them.

On the facts disclosed there can be little doubt that the writ petitioners are the legal representatives of the deceased Krishnan Padmanabhan and cannot complain of want of notice or opportunity. Exhibits. P2 to P6 issued in the years 1975 and 1976 are determinative orders embodying the result of the enquiry conducted by the statutory officer under the Act. Exhibit P2 for instance, records that the authorised agent of the son of the deceased produced a partition deed

dated 19.3.1972 before the officer, according to which, all the six legal heirs were jointly responsible for the arrears payable by the deceased. Exhibit P2 also records that the deceased had filed statements regarding the wages paid to the eleven workers of his shop for the period from January, 1971 to March, 1971 and the only son of the deceased had filed statements for the period from April, 1972 to November, 1972 in respect of twelve workers. The enquiry notice issued to the deceased having been returned u/s 8 of the Act, notices were issued to the legal heirs and enquiry was completed. These and other relevant details are recorded in Exts. P2 to P6. On these facts, we entertain little doubt that there is neither force nor merit in the petitioners' contention that they are not legal representatives and are not liable to be proceeded against, either under the Toddy Workers Welfare Fund Act, or under the Revenue Recovery Act. That is why we stated at the outset that on the facts disclosed, we see little scope for much discussion of the law.

10. Counsel for the petitioner then contended that while the assets of the deceased in the hands of the legal representatives may be answerable for the arrears due from the deceased, the properties partitioned on 19.3.1972 even before the death of Krishnan Padmanabhan, and which had come into the hands of the petitioners on such partition, are not liable to be proceeded against. As we noticed, the question whether, as legal representatives, the petitioners are liable to be proceeded against, is not to be confused with the question as to the extent of their liability or as to what are the assets liable to be proceeded against. Paragraph 5 of the counter-affidavit has stated that the partition deed and the partition suit referred to by the petitioners (O.S. 60/74) were only after the service of demand notice and attachment of the properties. But the petitioners would contend that the coercive processes of the Revenue Recovery Act cannot be invoked against the properties obtained by them of partition and allotment without avoiding or setting aside the partition by finding that it was not true or valid or was fraudulent or that no title had not passed from the deceased to the legal representatives. The decision in Chogmal Bhandari and Ors. v. Deputy Commercial Tax Officer II Division Kurnool (1976) S.C. 656, was cited for this purpose. The facts disclosed by the said decision are extreme. One Itikala Kollayya and his brother-in-law Kovvuru Narasimhaiah formed a partnership firm in food grains. The firm stood dissolved in 1963. Subsequently, the business was started in the name of B.V.S. Rao son of Bala Sessaiah. After the death of Kollayya, his son Bala Sessaiah and his son B.V.S. Rao, carried on joint Hindu family business. In 1966 B.V.S. Rao applied for, and was granted a certificate of registration, as a minor through his guardian, Bala Sessaiah. The Sales Tax Department continued to assess in the name of B.V.S. Rao for the years 1966-67, 1967-68 and 1968-69. All the provisional assessments were in the name of B.V.S. Rao. Information had been conveyed by B.V.S. Rao. to the Sales-tax Department that the business was joint Hindu family business. It was held that B.V.S. Rao was only a benamidar for Kollaiah who was the real proprietor of the firm. It appeared that on 16.9.1968 the partners of the dissolved firm

executed a registered deed of trust constituting the petitioners before the High Court as Trustees. Subsequently assessments were made against joint Hindu family in 1971. The Sales Tax Department, treating the Trust deed as void and fraudulent, issued notices to the petitioners who moved the High Court, to quash the same. The High Court held the trust deeds fraudulent. On appeal the Supreme Court observed:

Learned counsel for the appellants Mr. M.C. Bhandare submitted that the petitioners were merely trustees who were to discharge the debts of the creditors mentioned in Schedule A. The moment the trust deed was executed by Kollayya and Narasimhaiah, the title to those properties vested in the trustees and thus put beyond the reach of the Sales Tax Department, It cannot be said in the circumstances that the trustees were holding the properties either on account of or on behalf of the joint Hindu family because they had acquired an independent title under the trust. In our opinion, the contention put forward by the learned counsel for the appellants is sound and must prevail. The learned counsel appearing for the respondents, however, submitted that the mere fact that the members of the joint Hindu family were aware that they had incurred the sales tax liability because they were dealers in food grains and had conducted a number of sales was sufficient to show that the trust deed was fraudulent and unlawful. It was also submitted that u/s 17(1) of the Andhra Pradesh General Sales Tax Act, the sales tax authorities could realise the sales tax dues even from the trustees and the execution of the trust deed would not stand in the way of the recoveries sought to be made against the petitioners.

The Court referred to Section 53 of the Transfer of Property Act, and observed:

In the special and peculiar facts of the resent case which have been catalogued above, in our opinion, this is not a fit case in which the sales tax authorities can be allowed to hold that the deed of trust executed by the settlers was hit by Section 53 of the transfer of Property Act. It may be noted that u/s 53 of the Transfer of Property Act if a transfer is made with intent to defeat or delay the creditors it is not void but only voidable. If the transfer is voidable, then the sales tax authorities cannot ignore or disregard it but have to get it set aside through a properly constituted suit after impleading necessary parties and praying for the desired relief.

It is plain that the decision was rested on "the special and peculiar facts". There was no question of the Sales Tax Authorities having put into operation the coercive processes of the Revenue Recovery Act or having levied execution, and the petitioners appellants having their opportunity to prefer their claims or objections. On these grounds, we think the decision is distinguishable.

11. On the other hand a series of decisions have recognised the principle that it is open to the Revenue to invoke the coercive processes for recovery of arrears of dues to it, claiming a property as belonging to the defaulter, without, in the first instance, seeking to avoid or set aside a document or transaction purporting

to transfer title to the objecting claimant or petitioner, and leave such claimant or petitioner to establish his rights in claim proceedings or otherwise. This was recognised in *C. DHANALAKSHMI AMMAL Vs. Income Tax OFFICER, MADRAS.*, by the Madras High Court. While recognising that there was no provision in the Revenue Recovery Act to enable the Collector to attach and sell land not registered in the defaulter's name, the Court recognised that in view of the additional powers under the proviso to Section 46(2) of the Income Tax Act, powers of a civil Court for purpose of recovery were conferred on the Collector; and that this would invite Order XXI, Rule 58 of the C.P.C. and it would be open to the ostensible owner to prefer his claim or objection. The Court concluded thus:

As we have held above that the Collector acting merely under the Madras. Revenue Recovery Act, has no power to attach and sell property registered in the name of any one other than the defaulter, we would have issued a writ of mandamus to forbid him from continuing the proceedings against the property of the petitioner. But in view of fact that the Collector has also additional powers, which would enable him to attach the property ostensibly standing in the name of the petitioner, as property belonging to the defaulter, we do not think it necessary to make any such order, especially because Mr. Rama Rao Sahib appearing for the respondents has intimated that the attachment in this case would be treated as an attachment under the provisions of the CPC and the petitioner will be entitled to prefer a claim if she chooses to, and the claim will be enquired into and disposed of by the Collector. It will also follow that the party aggrieved by the decision of the Collector will have a right of suit under Order XXI, Rule 63 of the Code.

The additional powers conferred under the proviso to Section 46(2) of the Indian Income Tax Act, 1922, are contained in the Revenue Recovery Act itself, which allows claims or objections to be preferred and investigated. (vide Section 34; and, as we shall show, the same principle applies to Section 7).

12. In *KUNJIKANNAN NAIR AND OTHERS Vs. TAHSILDAR, CANNANORE, AND OTHERS.*, a learned Judge of this Court followed the above Madras ruling and refused to interfere in writ jurisdiction with the attachment effected by the Collector of property which ostensibly stood in the name of some one other than the defaulter. See also the Andhra High Court's ruling in *Haradevi Bai Vs. The Collector of Kurnool and Others*, . In *Isha Beevi v. Tax Recovery Officer Qullon* 1970 KLT 744, Mathew, J. of this Court (as he then was) who spoke for the Division Bench stated:

15. It was contended for the appellants, that Thangal Kunju Musaliar had executed four gift deeds during his life, that the title to the properties included in the gift deeds passed to the donees, and that the Revenue should not have proceeded to attach the properties as if they belonged to Thangal Kunju Musaliar at the time of his death. It is contended that the Revenue should have filed a suit and obtained an adjudication that the gift deeds were either sham or intended to

defeat or delay his creditors before proceeding to attach the properties. Reliance was placed in this connection upon the ruling of this Court in *Abdulla v. State of Kerala* ILR 1962 Ker. 396, where Vaidialingam, J., held that when a dealer assessed to sales tax transfers his property, the amount assessed cannot be recovered from the property transferred unless there is an adjudication by a civil Court that the transfer was either intended to defeat or delay the creditors, or that it was sham. We are not satisfied that it was necessary for the Revenue to have filed a suit for declaration that the gift-deeds executed by Thangal Kunju Musaliar were either sham or intended to defeat or delay the creditors before proceeding to attach the properties on the basis that they belonged to him on the date of his death. We think that the Revenue was entitled to proceed as if the properties belonged to Thangal Kunju Musaliar on the date of his death. The appellants, if they are aggrieved, could file claims before the concerned authority, and get an adjudication of the claims; and if dissatisfied with the adjudication, they can approach the civil Court for appropriate relief. The revenue is in the position of a decree-holder who is entitled to attach property which he believes to be his judgment-debtor's ignoring a sham transfer, or by the attachment avoiding a fraudulent transfer leaving it to the person interested to make a claim or institute a suit to establish his rights. In this case, for part of the properties covered by one of the gift-deeds, suits were filed in the Sub-Court, Quilon, and in the Munsiff's Court, Quilon, as O.S. Nos. 14 of 1968 and 76 of 1967 respectively. Although the Courts passed decrees declaring the title of the appellants to suit properties, the District Court in appeals filed by the Revenue, reversed the decrees and declared the gift deeds as not binding on the Revenue, in the enforcement of their claim for recovery of the arrears of tax against the properties. It is represented that second appeals from these decrees filed by the appellants are pending in this Court. We are of opinion that the proper forum for adjudicating the question, so far as the properties covered by the suits are concerned is the Court in which the appeals are pending. In respect of the properties not covered by the suits, remedy of the appellants as stated by the learned Judge, is to file claim petitions and get an adjudication of the question, and then, if so advised, approach the civil Court, if the decision in the claim enquiry is adverse to them. As the appellants have effective alternative remedy and as the claim involves resolution of disputed questions of facts, we think, the learned Judge was right in declining to adjudicate this controversy.

The decision was confirmed on appeal by the Supreme Court in (1976) I.S.C. cases p. 70. Nothing was said by the Supreme Court to shake the principle laid down by the Division Bench which we have extracted above. The principle of the above decision was followed as we stated, in *Devi and others v. State of Kerala* (1977) KLT 781 and in *District Collector v. Kunhi Ayisha Umma* (1978) KLT 77. In (1977) KLT 781, we noticed the decision of a learned Judge of this Court in (1969) KLT 860 and by way of distinction on facts, we pointed out that the property proceeded against in (1969) KLT case had ceased to be the property of the person liable for the dues, by a transfer effected in favour of the wife and

children, and the coercive processes were put into operation without avoiding or setting aside the transfer, and that such was not the position in the later case. This was one of the distinctions from the decision in (1969) KLT 860. It was also pointed out that there was the authority of the Division Bench ruling in Thangal Kunju Musaliar's case (1970) KLT 744, that coercive process can be put through even without setting aside the transfers effected by the person from whom the arrears are due. In (1978) KLT 77, we considered the decisions in AbdullCs case ILR 1962 Ker. 369 and Madam's case (1969) KLT 860. We noticed also the decision in Gourikutty Amma v. District Collector Alleppey (1974) KLT 103, reviewed in Gourikutty Amma v. District Court Alleppey (1975) KLT 29. It was after noticing all these decisions that the Diviskri Bench referred to and followed (1970) K.L. T. 744. The current of decision, as we have surveyed them, thus appears strong and consistent. In view of this, there is no substance in the objections raised on behalf of the writ petitioners that the properties allotted to them by the partition effected before the death of Krishnan Padmanabhan are not liable to be proceeded against under the Revenue Recovery Act. The petitioners have their remedy of preferring objections or claims. Section 34 deals with attachment of immovable property and expressly provides for the preferring of a claim or objection. Although S. 7 which deals with attachment of movables does not expressly provide for preferring claims or objections, this Court has recognised in the judgment in O.P. No. 3072 of 1973 that even u/s 7 of the Revenue Recovery Act it is open to the aggrieved person to make representation or prefer a claim against the attachment of movables. We find no force or merit in the objection raised on behalf of the petitioners. No arrest had been attempted and we need not at all concern or express ourselves with the liability for an arrest of the legal representatives debated in the referring judgment.

12. We dismiss the O.P. with no order as to costs.

O.P. No. 5747 of 1977

13. The live petitioners are the legal representatives of Shri Raman Pillai, Narayana Pillai who was an Abkari Contractor in respect of T.S. Nos. 7, 24, 25 and 27 of Perumbavoor Range for 1969-70 and T.S. Nos. 7, 10, 24, 25 and 27 of Perumbavoor Range for the year 1970-71. He was the employer u/s 2(c) of the Kerala Toddy Workers Welfare Fund Act, 1969. He died on 26.1.1971 (vide Ext. P2). The contract period was 1.4.1969 to 31.3.1971; and the deceased Raman Pillai was liable to pay welfare fund contributions only for the period from 14.1.1970 to 31.3.1971, as the Act was brought into force only from 14.1.1970. The petitioners were called upon to attend the enquiry for determining the welfare fund contribution due from the deceased. After hearing their objections, the amount due from the defaulter was settled at Rs. 10,050.42 for the years 1969-70, 1970-71. Exhibit P3 is copy of the demand notice served on the petitioners for realisation of the arrears. On the above averments in their petition the petitioners have raised the same contentions as the petitioners in O.P. No. 4816 of 1976. In the counter-affidavit it is stated that the deceased did not remit

contributions under the Act and, therefore, steps were initiated u/s 8 of the Act to determine the amount of contribution. Meanwhile the contractor died in November, 1971. Notices were issued on 17.3.1972 to his legal heirs to attend the enquiry to be held on 27.3.1972. The petitioners did not appear at the enquiry. A proposal to fix the total amount of contribution was drawn on 16.9.1972. The said proposal was communicated to the petitioners and objections were invited. The first petitioner filed his objections on 28.9.1972. Some of them were accepted, and final order Ext. R1 passed on 13.10.1972, and communicated to the petitioners. The petitioners did not file any appeal u/s 8(5) of the Act. A requisition for revenue recovery was issued only on 13.9.1976. These facts have been disclosed in the counter-affidavit. We have no hesitation to accept them as correct.

14. On the facts thus stated, and in the light of the legal position discussed in O.P. No. 4816 of 1976, we see no force or merit in the contentions urged. We dismiss this writ petition with no order as to costs.