
(1969) 02 KL CK 0005
In the High Court Of Kerala
Case No : O.P. No. 1114 of 1967

Kottoor Mariam

APPELLANT

Vs

The Tahsildar North Wynad Taluk

RESPONDENT

Date of Decision : 24-02-1969

Acts Referred:

Travancore-Cochin Revenue Recovery Act, 1951 — Section 24

Citation : (1969) KLJ 682

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : K.T. Harindranath, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Balakrishna Eradi, J.—The Petitioner challenges the legality of the revenue recovery proceedings initiated against her as per the notices Ex. P4 and P5 pursuant to which an item of property belonging to her is stated to have been attached for realising the arrears of sales-tax due by her husband one Sri Ipe. The petitioner's contention is that the property in question belongs to her absolutely having been assigned to her under a registered document dated 13-11-1964 and that if did not, therefore, constitute property belonging to the defaulter which alone could be proceeded against under the provisions of the Revenue Recovery Act. The contention advanced on behalf of the State is that the transfer in favour of the petitioner is fraudulent and collusive and was, therefore, liable to be ignored for the purpose of the revenue recovery proceedings. This contention cannot be accepted in the face of the decision of this Court in O.P. No. 1440 and 1557 of 1961 wherein Vaidyalingam J, after an elaborate consideration of the scheme of the Revenue Recovery Act and all other relevant aspects, has expressed the view that when a property has passed from the hands of the defaulter and title thereto has been obtained by a third party long before the issue of a notice of demand u/s 24 of the T.C. Revenue Recovery

Act (corresponding to Sec. 25 of the Madras Revenue Recovery Act), the state has no jurisdiction to proceed against those properties under the said Act for recovery of dues from the defaulter. This decision was later followed by the same learned Judge in his judgment in A.S. No. 613 of 1961. I am in respectful agreement with the above view and applying that to the present case, I hold that the assignment in favour of the petitioner having been admittedly effected long prior to the service of the notice of demand u/s 25 of the Madras Revenue Recovery Act which was done only on 29-4-1966, it is not open to the respondents to proceed against the property in the hands of the petitioner under the provisions of the Revenue Recovery Act unless and until a declaration has been obtained from a competent civil court adjudging the transaction of transfer to be collusive or fraudulent and liable to be ignored as not binding on the State as a creditor.

2. The original petition is, therefore, allowed and the impugned revenue recovery proceedings will stand quashed. The parties will bear their respective costs.