(1977) 06 KL CK 0032

In the High Court Of Kerala

Case No : W.A. No. 341 and O.P. No. 4133 of 1974

Peedikayulla Parambath Devi and Others — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

Date of Decision : 17-06-1977

Acts Referred:
Kerala Revenue Recovery Act, 1968 — Section 2, 68

Citation : (1977) 06 KL CK 0032

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J;K.K. Narendran, J

Bench : Division Bench

Advocate : M.P.R. Nair and P.F. Francis, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Gopalan Nambiyar, C.J.—The question raised in these cases is the same, namely, whether the coercive process of recovery under the provisions of the Kerala Revenue Recovery Act can have operation against the legal representatives of a deceased person for default occasioned by the deceased. In W. A. No. 341 of 1974 the question arises in respect of amounts due from the deceased-president of a Co-operative Society, who, it is said, had executed an agreement in respect of the amounts for which the liability was occasioned. After his death, proceedings were taken to recover the amounts due against his legal representatives, namely, wife and children under the provisions of the Revenue Recovery Act. The contention urged is that u/s 2 (e) of the Revenue Recovery Act the term ''defaulter'' has been statutorily defined, and the definition would not take in or include a legal representative of the person from whom the amount is due. The definition reads as follows:--

" ''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;"

The answer to the contention is furnished by a ruling of one of us (myself) in Janaki v. State of Kerala (1976) K LT 182) that the legal representative in law continues the persona of the deceased. Adverting to the identical argument now advanced before us, I stated thus:

"3. The contention of the petitioner was that the petitioner is not a ''defaulter'' as defined in the Revenue Recovery Act; that no steps having been taken against the property of the deceased during his lifetime, the coercive processes of the Revenue Recovery Act cannot be put into operation against the deceased''s property, which had devolved on the petitioner by inheritance; and therefore the proceedings are illegal and void. Reliance was placed on the definition of ''defaulter'' u/s 2 (e) of the Kerala Revenue Recovery Act, as a person from whom an arrear of public revenue due on land is due and as including a person who is responsible as surety for the payment of any such arrear. It was stressed that the absence in the definition, of any mention of legal representative was significant. This was read along with Section 68 of the Act, under which, inter alia, all moneys due from any person to the Government under a written agreement executed by him are recoverable as arrears of public revenue. It was contended that Section 28 of the Abkari Act authorises only the recovery of arrears of Abkari dues from the person liable to pay the same or his surety.

4. The argument, to my mind, ignores 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 para. 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." Counsel for the petitioners relied upon the decision of a learned Judge in Mariam v. Tahsildar, N. Wynad (1969) KLT 860, which, in its turn relied on an unreported judgment of a learned Judge of this Court (as he then was) in O. P. Nos. 1440 and 1557 of 1961 (Ker). This judgment toad been cited before me in the decision in Janaki v. Tahsildar, N. Wynad (1976) KLT 132 and was distinguished as follows:

"5. Petitioner''s counsel relied on the decisions in Mariam v. Tahsildar, North Wynad (1969) KLT 860 and Kunhi Ayisia Umma v. District Collector, Kozhikode ILR (1974) Ker 391. It is plain that these cases can have no application. In the first of these, coercive proceedings were sought to be taken out against a person in whom title had become vested by assignment in respect of dues which had accrued against the assignor prior to the assignment. In the second, title had similarly become vested in a third party by gift, and proceedings were in respect of dues which had accrued against the donor prior to the gift. The position here disclosed is fundamentally different. The arrears due from the deceased are sought to be recovered from his legal representative who continues the persona of the deceased."

It will be noticed that in both these cases the property that was sought to be proceeded against had ceased to be the property of the person liable for the dues, by a transfer effected in favour of the wife and children or other close relations. The coercive processes were sought to be put into operation without avoiding or setting aside the transfer by processes known to law. It was in such circumstances that it was ruled that it was not open to the authorities to start coercive proceedings against the properties on the assumption that notwithstanding the transfer, the properties continued to be the properties, of the person from whom the amounts were due. Such is not the position disclosed in this case. We may, however note, that there is the authority of a Division Bench Ruling in Isha Beevi and Others Vs. Tax Recovery Officer and Others, that coercive processes can be put through even without setting aside or avoiding transfers effected by the person from whom arrears are due. We need not dilate on this aspect, as we are concerned with the simple question whether proceedings not having been taken against the defaulter in his lifetime, can be initiated against his legal representatives after his death.

2. The learned Government Pleader drew our attention to the decision of Madhavan Nair J. of this Court in Kochu Narayanan v. Janaki Amma (1962) Ker LJ 951. The learned Judge had taken the same view as I took later in (1976) KLT 182. The relevant portion of the judgment reads as follows:

"6. The word ''defaulter'' was not defined in the Act, but has been defined 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 representative. In the context of this case, the defaulters were Marthandan Reman, Kunju Kalyani and the legal representatives of the deceased Narayanan Parameswaran."

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.

3. We are therefore of the opinion that there is no force in the objection raised in this appeal. Our learned brother, Subramonian Poti J. against whose judgment this appeal is preferred was also of the view that proceedings under the Revenue

Recovery Act for default of a deceased person can be taken against his legal representatives. We affirm the judgment and dismiss this appeal with no order as to costs. O. P. No. 4133 of 1974.

4. The question raised in this writ petition is also the same as in W. A. No. 341 of 1974, heard along with this, and in which we have just delivered judgment. The Revenue Recovery Proceedings in this case were also started and were sought to be continued, against the legal representatives, namely, the wife and children of the deceased person from whom amounts were due, under an agreement dated 28-10-1952. Over Rupees 12,000 appears to be the amount that is due. The contention raised is precisely the same as that in W. A. No. 341 of 1974. Our attention was called to the reference order made in this case by our learned brother Eradi J. Therein it is stated:

"It is contended on behalf of the writ petitioner that u/s 68 (1) of the R. R. Act, Revenue Recovery proceedings can be taken only in respect of moneys due to the Government from any person which, under a written agreement executed by such person, are recoverable as arrears of public revenue due on land, and that hence even if after the death of the contractor who has executed the agreement his liability may be enforceable against his legal representatives to the extent to which they have come by his assets resort cannot be taken to the process of summary recovery authorised by the R. R. Act unless the legal representatives are also signatories to the written agreement referred to in Section 68. I find there is prima facie force in this contention. It is however, brought to my notice that a similar contention raised in O. P. 3344 of 1972 (Ker) was not accepted by a learned single Judge of this Court and that against the said judgment Writ Appeal No. 341 of 1974 is now pending before the Division Bench. I direct that this case also be posted before the Division Bench along with Writ Appeal No. 341 of 1974 With respect, we can find no warrant to confine proceedings under the Revenue Recovery Act only to signatories to the written agreement referred to in Section 68. On principle, a legal representative continues the persona of the deceased, as was recognised in (1976) KLT 182 by one of us, and by Madhavan Nair J. in (1962) Ker LJ 951.

5. Counsel for the petitioners urged that the quantification of liability was made without notice to petitioners 2 to 10 at any stage of the proceedings whatsoever. Averments to this effect have been made in para, 6 of the petition. In answer to the same it is pointed out in paras. 2 and 8 of the counter-affidavit that the proceedings were taken against the 1st petitioner, one of the legal representatives of the deceased. It is the contention of the petitioners'' counsel that in such circumstances, petitioners 2 to 10 would not be bound by the quantification of liability or by the coercive proceedings sought to be put into operation against them. Assuming, without deciding, that this is so, it is open to these petitioners, if they claim to be not defaulters, as urged before us, to prefer a claim u/s 46 of the Revenue Recovery Act; and since this alternative remedy is open to them, we do not, and indeed cannot, in these proceedings grant the

reliefs prayed for. Nothing said herein should be understood as precluding petitioners 2 to 10, if so advised, from preferring their objection u/s 46 of the Act. Subject as above, we dismiss this Original Petition with no order as to costs.

