IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 20TH JUNE 2008 / 30TH JYAISHTA 1930

OP.No. 12436 of 1997(E)

PETITIONER:

S.PURUSHOTHAMAN, PALLAVI,
MAMANGALAM. COCHIN-682 025.

BY ADV. SRI.B.S.KRISHNAN (SR.)

RESPONDENTS:
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1. AUTHORISED OFFICER/DEPUTY TAHSILDAR (R.R.)
FOR KERALA FINANCIAL CORPORATION, ERNAKULAM

2. DISTRICT COLLECTOR,
ERNAKULAM.

*ADDL. R3 IS IMPLEADED

R3.KERALA FINANCIAL CORPORATION,
VELLAYAMBALAM, REPRESENTED BY ITS
DEPUTY MANAGER LEGAL SRI.V.A.JEROME

*ADDL. R3 IS IMPLEADED AS PER ORDER DATED 25/03/2004 IN I.A. 4319/2004.

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR – R1 & R2
ADV. SRI.V.B.UNNIRAJ, SC – K.F.C.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 20/06/2008, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

ORDER ON C.M.P. NO.22157 OF 1997 IN O.P. NO.12436 OF 1997

DISMISSED

20/06/2008 SD/- ANTONY DOMINIC, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF NOTICE OF ATTACHMENT OF IMMOVABLE PROPERTY.

EXT.P2: COPY OF THE DOCUMENT OF ASSIGNMENT.

EXT.P3: COPY OF ENCUMBRANCE CERTIFICATE IN RESPECT OF THE PROPERTY FROM 1990 TO 1997.

EXT.P4: COPY OF DEED NO.627/94.

RESPONDENT'S EXHIBITS: NIL

// TRUE COPY //

Rs/

ANTONY DOMINIC, J.

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O.P. No. 12436 OF 1997 E
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Dated this the 20th June 2008

J U D G M E N T

The challenge in this writ petition is against the revenue recovery proceedings initiated against the petitioner for the realisation of the amounts that are due to the additional 3rd respondent, Kerala Financial Corporation. The petitioner claims that he is the absolute owner and in possession of 11.925 cents of land in Sy. No. 163/6A of Edappally South Village where he claims to have put up a residential building also. The property is said to have been purchased by Ext. P2 document in the joint name of the petitioner and his wife. The petitioner submits that subsequently by settlement deed registered as document No. 627/94 of Edappally Sub Registrar's Office, the right which his wife had in the property was settled in his favour. On this basis he claims to have got the exclusive ownership and possession of the property mentioned.

3. According to the petitioner, while he was so enjoying the property, recovery proceedings have been initiated by Ext. P1 on the

request made by the additional 3rd respondent for realising an amount of Rs.1,01,98,248/- plus interest at 14% from 1.1.1991. Petitioner submits that Ext. P1 notice issued under Section 69(3) of the Kerala Revenue Recovery Act is on a wrong premise and the respondents have no jurisdiction to initiate the proceedings against his properties.

4. A counter affidavit has been filed on behalf of respondents 1 and 2. According to the respondents, requisition was issued at the instance of the additional 3rd respondent for realising the dues from M/s. Optima Packaging Limited of which the petitioner's wife was one of the directors. It is stated that when default was committed demand notices were issued on 5.7.1991 and were served on the defaulters on 25.7.1991. It is stated that in pursuance thereof the factory of the defaulters at Thodupuzha was attached on 10.8.1993 and on its sale, an amount of Rs.1,30,000/- was realised out of the dues exceeding a crore. It is stated that to recover the balance amount due, recovery proceedings were continued by attaching the rights Mrs. Devika Purushothaman, one of the directors of the company, has on the property in the joint

ownership of herself and her husband, the petitioner herein. According to them the settlement deed No. 627/94 was executed long after the default was committed and even after the initiation of the revenue recovery proceedings itself. It is stated that the attempt was obviously to evade payment and it attracts the provisions of Section 44 of the Revenue Recovery Act and on that basis the respondents continued the revenue recovery action.

5. The additional 3rd respondent in its counter affidavit denies the claim of exclusive ownership raised by the petitioner and contends that the settlement deed relied on, is executed only to defraud the creditors and to avoid payment. It is also stated that the petitioner's wife and other directors have executed deed of guarantee by which she had personally guaranteed the repayment of the loan availed of by the company. According to them, there is no illegality in the proceedings initiated against the property.

6. In the writ petition only two grounds were urged. The first ground is that Ext. P1 demand notice is issued under the wrong premise that the property belongs to Mrs. Devika Purushothaman. The second ground is that the respondents have failed to comply

with the mandatory provisions of Section 44. Petitioner has also filed a reply affidavit disputing the averments raised by the respondents in their affidavit filed.

7. As already noticed, petitioner's wife was a director of the company which is a defaulter and her liability is not in dispute. The fact that the property in question was in the joint ownership of the petitioner and his wife is also not in dispute nor can it be disputed in view of the personal guarantee executed by her. The settlement deed was executed in 1994 by which the defaulter's interest in the property was assigned to her husband, the petitioner herein. From the dates noticed above, the settlement of the defaulter's interest in the property can be seen to be long after default was committed and was even after recovery proceedings were initiated. Though the petitioner has a contention that recovery proceedings were initiated only long after the settlement deed, in my view such a contention from the petitioner is only to be rejected. Recovery proceedings were initiated against his wife and his wife has not come up with a contention to that effect. Further, on facts, I have also found that the original notice was issued on 5.7.1991 and was

served on the defaulters on 25.7.1991 and the settlement deed was executed as document No. 627/94 on 2.2.1994. Therefore this plea does not have any substance. Going by the dates as noted above, it is clear that this is a case where the only motivation for execution of the settlement deed was to evade recovery and hence Section 44 applies to the facts of this case.

8. Learned counsel for the petitioner tells me that he has filed an application, I.A. No. 7120/08, for amending the writ petition incorporating an additional ground that the revenue recovery proceedings are illegal. Counsel for the additional 3rd respondent and the learned Govt. Pleader vehemently opposed this prayer. In my view in a writ petition filed in 1997 is probably one of the oldest original petitions pending in this Court. This interlocutory application filed on 9.6.2008 for amending the writ petition is highly belated and the same is not liable to be entertained. Learned Govt. Pleader also refers to me a judgment of this Court in M/s. Lakshmi Enterprises v. State of Kerala & Others {ILR 2008(2) Kerala 51} where the contention raised as now sought to be urged has been negatived by this Court. Since in my view the amendment

itself is highly belated and is liable to be dismissed and hence a deeper probe into this is unwarranted.

Original Petition fails and is dismissed.

ANTONY DOMINIC
JUDGE

jan/-

ANTONY DOMINIC, J.

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J U D G M E N T

20TH JUNE, 2008