IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 10TH DAY OF JUNE 2015/20TH JYAISHTA, 1937

RSA.NO. 493 OF 2011

AGAINST THE JUDGMENT IN AS 63/2005 OF ADDITIONAL DISTRICT COURT (ADHOC)-II, MANJERI

AGAINST THE JUDGMENT IN OS 140/2001 OF SUBORDINATE JUDGE'S COURT, MANJERI

APPELLANT/1ST RESPONDENT/PLAINTIFF:

FATHIMA BEEVI,
D/O. CHEMBAYIL KAMMUKOYA, CHEMAYIL, ERANAD TALUK
MANJERI AMSOM DESOM, MALAPPURM DISTRICT.

BY ADVS.SRI.M.V.THAMBAN
SRI.R.REJI
SMT.THARA THAMBAN
SRI.B.BIPIN
SMT.REVATHY P.NAIR

RESPONDENTS/APPELLANTS 1 & 2 & 2ND RESPONDENT/DEFENDANTS 1 TO 3:

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1. STATE OF KERALA,
REPRESENTED BY THE DISTRICT COLLECTOR,
MALAPPURAM DISTRICT, PIN - 676 505.

2. THE AGRICULTURE AND SALES TAX DEPUTY
COMMISSIONER, MALAPPURAM, MALAPPURAM DISTRICT
PIN - 676 505.

3. ABDULLA,
S/O. KUTTASSEERI ANVAR KUTTY HAJI, KUTTASSEERI
ERANAD TALUK, MANJERI AMSOM DESOM, MALAPPURAM DISTRICT
PIN - 676 121.

R1 & R2 BY GOVERNMENT PLEADER SRI.SUDHEESH KUMAR

THIS REGULAR SECOND APPEAL HAVING BEEN FINALLY HEARD ON 10-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

AS

A.HARIPRASAD, J.

R.S.A.No.493 of 2011

Dated this the 10th day of June, 2015

J U D G M E N T

Appellant is the plaintiff in O.S.No.140 of 2001 on the file of Subordinate Judge's Court, Manjeri. The suit is one for declaration and consequential injunction. The first defendant in the suit is the State of Kerala. Second defendant is the Agriculture and Sales Tax Deputy Commissioner, Malappuram. 3rd defendant is the husband of the plaintiff. Averments in the plaint in brief are that the plaintiff is the absolute owner of the plaint schedule property and she got the property by virtue of a gift deed in the year 1982 (Ext.A1). Ever since the gift was made by her husband (3rd defendant), she is an absolute possession of the property and enjoying the same. The plaintiff raised a contention that her husband was not staying with her. He was staying in a rented house. It is her contention that her husband was having sales tax arrears and the defendants 1 and 2 were proceeding against the 3rd defendant for recovery of the tax arrears. It is the case of the plaintiff that the 3rd defendant in collusion with the Government officers attempted to realize the sales tax arrears by selling the plaint schedule property. Hence, the suit for declaration and injunction. It is interesting to note that the 3rd defendant remained ex-parte. Defendants 1 and 2 contested the suit by filing a written statement. Main contention in the written statement filed by the second defendant is that the suit is barred in view of the provisions in the Specific Relief Act and also under the provisions of the Revenue Recovery Act. According to the defendants, the suit is without any *bona fides.* Defendants would contended that the suit is the product of a collusion between the plaintiff and her husband.

2. Learned Munsiff decreed the suit against which the State preferred an appeal before the District Court, Manjeri. Learned Additional District Judge after considering the entire evidence found that the appellant/plaintiff is not entitled to get a declaratory relief in the absence of any challenge against her right made by the respondents.

3. Heard the learned counsel for the appellant and the learned Government Pleader.

4. Learned Government Pleader submitted that the lower appellate court considered the facts correctly and arrived at a conclusion that in order to get a declaratory decree under Section 34 of the Specific Relief Act the plaintiff should establish that the defendants are interested in denying any right or legal character of the plaintiff over the plaint schedule property. Going by the averments in the written statement filed by the defendant No.2 what could be seen is that they intended to proceed against the defaulter alone. There is no threat posed against the plaintiff's property described in the plaint schedule.

5. Learned Government Pleader contended that under Section 44 of the Revenue Recovery Act, the Government has every right to proceed against the property of the defaulter and against the fraudulent transferees from the defaulter. However, in this case there is no contention raised by the defendants that Ext.A1 gift

deed in favour of the plaintiff was a fraudulent transfer.

6. Learned counsel for the appellant contended that the gift deed is one dated 16.01.1982, whereas the tax arrears fell due for a period starting from 1986. Therefore, in the absence of any specific contention by the State that Ext.A1 gift deed is a fraudulent transfer made in anticipation of extricating the defaulter from a liability, I find no basis for the apprehension raised by the plaintiff for seeking a relief of declaration and consequential injunction. The lower appellate court relied on various decisions to find that without any challenge or threat on the plaintiff's right to any legal character, the plaintiff is not entitled to get the declaration prayed for. Once it is point out that the main relief of declaration is not allowable, it goes without saying that a consequential relief of injunction also cannot be granted.

After hearing learned counsel on both sides, I am of the view that the learned Additional District Judge was right in holding that the plaintiff has not made out any reason in the plaint to claim declaration in the light of the contentions taken by the contesting defendants. No substantial question of law arises in this matter. Therefore, the appeal is dismissed.

Sd/-
A.HARIPRASAD, JUDGE.

AS

/True Copy/

P.A. to Judge