

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

WEDNESDAY, THE 14TH DAY OF JANUARY 2015/24TH POUSHA, 1936

RSA.No. 20 of 2015 ()

**AGAINST THE JUDGMENT AND DECREE IN AS 28/2012 of DISTRICT COURT,
ALAPPUZHA DATED 24-11-2014.**

**AGAINST THE JUDGMENT IN OS 815/2010 of PRINCIPAL MUNSIF'S COURT,
ALAPPUZHA DATED 31-01-2012.**

APPELLANT(S)/APPELLANT/PLAINTIFF :

**LEKHA, AGED 45 YEARS,
VELIYIL HOUSE, MUHAMMA,
KANJIKUZHAY VILLAGE,
ALAPPUZHA.**

**BY ADVS.SRI.S.SANAL KUMAR.
SMT.BHAVANA VELAYUDHAN.
SMT.T.J.SEEMA.**

RESPONDENT(S)/RESPONDENTS/DEFENDANTS :

**1. THE STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, CIVIL STATION,
ALAPPUZHA - 688 001.**

**2. THE VILLAGE OFFICER
VILLAGE OFFICE, KANJIKUZHAY,
ALAPPUZHA-688 523.**

BY GOVERNMENT PLEADER SRI.K.K.SAIDALAVI.

**THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON
14-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

amk

A.HARIPRASAD, J.

R.S.A No.20 of 2015

Dated this the 14th day of January, 2015.

J U D G M E N T

Regular second appeal against the judgment and decree passed by the learned District Judge, Alappuzha in A.S No.28/2012. The suit in the trial court was for declaration and permanent prohibitory injunction. The appellant/plaintiff is the owner of plaint schedule property and she is in exclusive possession of the landed property, a building situated thereon and the moveable therein. It is the case of the plaintiff that her husband, who was not in good terms with her, deserted her and children. She came to know that her husband was having a liability to a tune of Rs.80,000/- as per an award passed by the Motor Accident Claims Tribunal, Alappuzha. Since he did not pay the award amount, revenue recovery proceedings was taken under the Kerala Revenue Recovery Act, 1968 (in short 'the Act') and the Rules thereunder. The appellant is not a party to the proceedings before the Motor Accident Claims Tribunal,

Alappuzha. She has not incurred any liability. She is not a defaulter of any public revenue due to the government. The defendants, Officers of the State, were unlawfully trying to proceed against the movable and immovable properties of the appellant. They have issued notices under Sections 7 and 34 of the Act purported to be against her husband. But they tried to take coercive steps against the movable and immovable properties of the appellant. Hence she approached the court below with the suit.

2. In the written statement, the defendants contended that notices under Section 7 and 34 of the Act have been served on the defaulter and not on the plaintiff/appellant. It is also contended that the second defendant viz; the Village Officer is bound to realize the amount and for that purpose he had visited the appellant's house and informed her about the amount to be realized from her husband (defaulter). Specific contention of the

defendants is that the Village Officer had not declared that he would proceed against the movable and immovable properties of the appellant. It is also clearly mentioned that the defendants have no intention to proceed against the movable and immovable properties of the appellant for realizing the amount due from her husband.

3. Taking note of these contentions, the trial court found that the plaintiff is not entitled to get the declaratory and permanent prohibitory injunction decrees as claimed in the plaint. The appellant challenged the finding of the trial court before the District Court, Alappuzha. Learned District Judge also considered these contentions and found that there is no reason to grant a decree as claimed in the plaint by invoking Section 34 of the Specific Relief Act, 1963. On a reading of Section 34 of the Act, it is clear that the plaintiff can seek a declaratory decree only if any person denied or express any

interest to deny his title to any legal character or to any right as to any property. In that event the court may in its discretion make a declaration that he is entitled to get a relief. In this case, there is an express admission by the defendants/Officers of the State that they have no intention to proceed against the movable or immovable properties of the appellant/plaintiff. In that case, the courts below is legally justified in finding that there is no cause of action for the suit and the discretion of granting a declaratory decree need not be exercised in favour of the plaintiff. I find no substantial question of law in this matter. However, I notice an observation by the learned District Judge in the judgment that the plaintiff/appellant has not established a prima facie case and balance of convenience is not in favour of granting relief to the appellant. I am afraid, the learned District Judge has committed a serious legal mistake in saying so, forgetting that those are parameters to be considered in a

temporary injunction petition and not in a suit. Nevertheless, it will not affect the final decision in the case. I may consider the plea raised by the learned counsel for the appellant that in spite of admitting the unchallengeable right of appellant over movable and immovable properties claimed by her, the Officers are still threatening to proceed with the revenue recovery action. In view of the candid admissions in the written statement, the defendants have no right to proceed against the movable and immovable properties belonging to the appellant. I find no substantial question of law in this appeal. Hence the appeal is dismissed.

All pending interlocutory applications will stand dismissed.

**A.HARIPRASAD,
JUDGE.**