IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR.JUSTICE K.HARILAL

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WA.No. 2768 of 2009 IN WP(C).16558/2009

WP(C) 16558/2009 of HIGH COURT OF KERALA
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APPELLANT(S)/RESPONDENTS 1 TO 3 IN THE WP(C):
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1. STATE OF KERALA, REPRESENTED BY
   DISTRICT COLLECTOR, KASARGODE.

2. THE TAHSILDAR, HOSDURG, KASARGODE.

3. THE AGRICULTURAL INCOME TAX OFFICE,
   KANHANGAD.

   BY SPL. GOVERNMENT PLEADER DR.SEBASTIAN CHAMPAPPALLY

RESPONDENT(S)/PETITIONERS & RESPONDENTS 4 TO 7 IN THE WP(C):
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1. THANKAMMA JOSEPH, W/O.JOSEPH,
   KALAPPURACKAL, PADAYANKAL, DHARKHAS POST
   PARAPPA VIA, KASARGODE DISTRICT.

2. APPACHAN, S/O.JOSEPH, KALAPPURACKAL,
   PADAYANKAL, DHARKHAS POST, PARAPPA VIA
   KASARGODE DISTRICT.

3. SHIBU, S/O.JOSEPH, KALAPPURACKAL,
   PADAYANKAL, DHARKHAS POST, PARAPPA VIA
   KASARGODE DISTRICT.

4. WILSON, S/O.JOSEPH, KALAPPURACKAL,
   PADAYANKAL, DHARKHAS POST, PARAPPA VIA
   KASARGODE DISTRICT.

5. JANCY, S/O.JOSEPH, KALAPPURACKAL,
   PADAYANKAL, DHARKHAS POST, PARAPPA VIA
   KASARGODE DISTRICT.

6. SHEEJA BABU, S/O.JOSEPH,
   KALAPPURACKAL, PADAYANKAL, DHARKHAS POST
   PARAPPA VIA, KASARGODE DISTRICT.

7. MARYKUTTY VARGHESE, W/O.VARGHESE,
   KALAPPURACKAL, PADAYANKAL, DHARKHAS POST
   PARAPPA VIA, KASARGODE DISTRICT.

(...2)

8. V.P.KUNHAMI, W/O.LATE T.T.P. ABU ALIAS ABDULLA,
UDUMBANTHALA, OKLAVARAPPALAM
PAYYANNUR, PAYYANNUR P.O., SOUTH THRIKKARIPUR
VILLAGE, PIN-684 306.

9. V.P.FATHIMA, D/O.LATE T.T.P. ABU ALIAS ABDULLA,
UDUMBANTHALA, OKLAVARAPPALAM
PAYYANNUR, PAYYANNUR P.O., SOUTH THRIKKARIPUR
VILLAGE, PIN-684 306.

10. V.P.BASHEER, S/O.LATE T.T.P. ABU ALIAS
ABDULLA, UDUMBANTHALA, OKLAVARAPPALAM
PAYYANNUR, PAYYANNUR P.O., SOUTH THRIKKARIPUR
VILLAGE, PIN-684 306.

11. V.P.SALEEMA, D/O.LATE T.T.P. ABU ALIAS
ABDULLA, UDUMBANTHALA, OKLAVARAPPALAM
PAYYANNUR, PAYYANNUR P.O., SOUTH THRIKKARIPUR
VILLAGE, PIN-684 306.

R10 BY ADV. SRI.MAHESH V. RAMAKRISHNAN
R1-R7 BY ADV. SRI.SUBHASH CYRIAC

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN & K.HARILAL, JJ.

Writ Appeal No.2768 of 2009

Dated this the 9th day of January, 2015

JUDGMENT

Thottathil B. Radhakrishnan, J.

We have heard the learned Special Government Pleader for the Commercial Taxes Department quite in extenso. We have also heard the learned counsel for the respondents. Under challenge is the judgment of the learned single Judge interfering with revenue recovery proceedings taken against the writ petitioners, who are the respondents in this appeal.

2. The fact of the matter remains that one TTP Abu @ Abdulla, South Thrikkaripur Village, is a defaulter in terms of the provisions of the Kerala Agricultural Income Tax Act. Consequentially, proceedings have been initiated against him under the provisions of the Kerala Revenue Recovery Act. He is the defaulter. The Tahsildar appears to have taken the view in Ext.P12 that the lands in the possession of the writ petitioners, who are respondents 1 to 7 in this appeal, are lands of Mr.Abu. There is absolutely no document or other material relied on, even from the revenue records, to assert that the property belonged to Abu. Tax due from Abu can be recovered either from him or from

his assets. If another person or property with another is to be proceeded against as if he is a transferee, it has to be first established to the satisfaction of the Revenue that what was transferred was an item of property belonging to Abu and, if such a transfer is seen, the Revenue would be within jurisdiction to examine whether that transfer is one hit by the provisions of the Revenue Recovery Act or the Agricultural Income Tax Act thereby enabling the establishment to proceed against that property even on a ground that there is a fraudulent transfer. Such situation not having being reflected on the face of Ext.P12, we see no legal infirmity or error of jurisdiction in the learned single Judge having quashed Ext.P12. We, however, leave open the right of the Revenue to proceed against the property, including those now told to be in the possession of the writ petitioners, if action is taken by the Revenue disclosing that the said property belonged to Abu. It goes without saying that this judgment does not stand in the way of the department proceeding against any property of Abu. Subject to that, this writ appeal is dismissed.

Sd/-
THOTTATHIL B. RADHAKRISHNAN, JUDGE

Sd/-
K.HARILAL, JUDGE

okb.