

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 16TH DAY OF OCTOBER 2015/24TH ASWINA, 1937

WA.No. 2225 of 2015 IN WP(C).9409/2015

AGAINST THE JUDGMENT IN WP(C) 9409/2015 DATED 24-07-2015

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APPELLANT/ PETITIONER :

HAMZA, AGED 39 YEARS
S/O.NAFEESA, NALAKATH HOUSE, KOTTAKKAL P.O.
TIRUR, MALAPPURAM DISTRICT.

BY ADV. SRI.C.M.MOHAMMED IQUABAL

RESPONDENTS/RESPONDENTS :

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO REVENUE DEPARTMENT
GOVT. SECRETARIAT, THIRUVANANTHAPURAM - 695 001.
2. THE SECRETARY,
REVENUE DEPARTMENT, GOVT. SECRETARIAT
THIRUVANANTHAPURAM - 695 001.
3. THE COMMISSIONER OF LAND REVENUE,
MUSEUM JUNCTION, THIRUVANANTHAPURAM - 695 001.
4. THE DISTRICT COLLECTOR,
MALAPPURAM, COLLECTORATE P.O., MALAPPURAM - 676 505.
5. THE DEPUTY TAHSILDAR (RR),
TALUK OFFICE, TIRUR, MALAPPURAM - 676 101.
6. THE VILLAGE OFFICER,
THIRUNAVAYA VILLAGE OFFICE, POST THIRUNAVAYA, TIRUR
MALAPPURAM - 676 102.
7. THE SOUTH MALABAR GRAMIN BANK,
TIRUR BRANCH, POST TIRUR, MALAPPURAM - 676 301
REPRESENTED BY ITS MANAGER.

8. NAFEESA,
NALAKATH HOUSE, KOTTAKKAL P.O., TIRUR TALUK
MALAPPURAM - 676 503.
9. ABDUL AZEEZ @ ROBERT PATHROSE,
CHITTAKAM, KOTTAKKAL P.O., TIRUR TALUK
MALAPPURAM DISTRICT - 676 503.

R1 TO R6 BY SR. GOVERNMENT PLEADER, SRI.P.I. DAVIS
R7 BY ADV. SRI.T.R.RAVI, SC, S.MALABAR G. BANK

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 16-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2225 OF 2015

Dated this the 16th day of October, 2015

JUDGMENT

Shaffique, J.

The petitioner in W.P.(C) No.9409 of 2015 has filed this appeal challenging judgment dated 24.07.2015 by which the learned Single Judge has dismissed the writ petition.

2. The writ petition has been filed by the petitioner challenging the revenue recovery proceedings taken against his property in terms of Exts.P8 and P9. Ext.P8 is an order passed by the Commissioner of Land Revenue. Ext.P9 is the order passed by Government rejecting the revision filed under Section 83(1) of the Kerala Revenue Recovery Act. The contentions urged on behalf of the petitioner is that the Land Revenue Commissioner and the Government did not interfere with the Revenue Recovery proceedings against the property belonging to the petitioner.

3. Short facts involved in the writ petition would disclose that the mother of writ petitioner, i.e. the 8th respondent herein, has executed a document assigning her

right over a property in favour of the petitioner as per Ext.P1 document dated 23.12.1998. The 8th respondent was the guarantor to the loan transaction with reference to the loan granted by 7th respondent Bank. The Revenue Recovery proceedings were initiated in the year 1998 and the property was attached.

4. The contention urged by the petitioner was that though the Bank has proceeded against the property of the principal debtor the same had been dropped and thereafter the property of 8th respondent was attached which is assigned to the petitioner as per Ext.P1 document. Petitioner contended that since the proceedings against the property had been dropped at the instance of 8th respondent, no further proceedings can be taken against the petitioner and the same is barred by limitation.

5. Counter affidavit has been filed by the 5th respondent *inter alia* stating that as per the requisition No.7/1990 dated 08.06.1998 the Kerala Gramin Bank communicated to the Collector that an amount of Rs.35,326.55

being the bank loan was due from the petitioner. Demand notices were issued in Form No.I under Section 7 of the Act to the defaulter. It was served on 19.12.1998, but he did not remit the amount. The first defaulter had no movable or immovable property. However notices were also issued to Smt.Nafeesa(8th respondent), who has filed an objection dated 06.06.1998 stating that she is only a surety to the loan availed by the petitioner and defaulter has 26 cents of property. It is further stated that when steps could not be taken to recover the amounts from the defaulter, the property of 8th respondent was proceeded and in the mean time it is noticed that she had transferred the property in favour of the petitioner.

6. The contention of the Bank is that the 8th respondent has deliberately transferred the property only with the intention to overcome the provisions of Revenue Recovery Act and therefore the petitioner cannot contend that the property is not liable to be proceeded for recovery of the loan. The learned Single Judge after considering the respective contentions

of the parties observed that since the requisition has been made as early as on 14.12.1998, the question regarding the bar of limitation has no application.

7. The contention urged by the petitioner is that since the order of attachment has been lifted as per Ext.P3 and the assignment was subsequent to the same, indicates that the property would not be proceeded. But Ext.P3 refers to 9 cents of property, whereas Ext.P4 refers to 28½ cents of property, which is now proceeded against.

8. Another argument is that the recovery is bared by limitation. In fact merely for the reason that no steps were taken for recovery of the amount does not mean that the recovery is barred by limitation, as long as the requisition has been made as early as on 14.12.1998. The legal position is covered by judgment of the Supreme Court in **State of Kerala v. V.R. Kalliyankutty** [1999 (2) KLT 146 (SC)].

Under such circumstances we do not think that the contention urged on behalf of the appellant is sustainable.

Learned Single Judge having considered the entire issue dismissed the writ petition. We do not find any good ground to interfere with the judgment. The Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**