

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No.7973 of 2010 (V)

PETITIONERS :

1. BHANUMATHI C.M.
AGED 84,
W/O.PANKAJAKSHAN, MAMBILLY VEEDU, MANNAM P.O.,
N.PARAVUR, ERNAKULAM DISTRICT. (DIED)

(ADDL. P2 TO P9 ARE IMPEADED AS PER ORDER DATED 31/05/2014 IN IA
6844/2014.)

- Addl.P2. V.P.VIJAYAN,
AGED 62,
S/O.LATE BHANUMATHI, 'RAGAMALIKA', MANAKKAPPADY,
KARUMALLOOR -683 511.
- Addl.P3. M.P.SOMAN,
AGED 61,
S/O.LATE BHANUMATHI, GREEN GARDENS, AMBATTU PALAXAM,
CHITTOOR COLLEGE- 678 104.
- Addl.P4. SULATHA,
AGED 59,
D/O.LATE BHANUMATHI, KUMBALAT HOUSE, KUMBALANGHI.P.O.,
KOCHI -682 507.
- Addl.P5. P.PRAKASAN,
AGED 57,
S/O.LATE BHANUMATHI, SREERAGAM, MAMPILLY HOUSE,
VADAKKEKARA.P.O.- 683 522.
- Addl.P6. SUNITHA PRASAD,
AGED 55,
D/O.LATE BHANUMATHI, 87/1, SULTAN PALAXA,
BANGALORE.
- Addl.P7. AMBILI ,
AGED 53,
D/O.LATE BHANUMATHI, KANNETH HOUSE, NAYARAMBALAM.P.O.
- Addl.P8. ANITHA,
AGED 51,
D/O.LATE BHANUMATHI, MAMPILLY HOUSE, MANNAM.P.O.,
N.PARUR.

WP(C).No. 7973 of 2010 (V)

Addl.P9. PRADEEP,
 AGED 49,
 S/O.LATE BHANUMATHI, T C 4/912 (5) KWADIAR.P.O.
 THIRUVANANTHAPURAM – 695 003.

BY ADVS.SRI.T.K.RADHAKRISHNAN
 SRI.T.B.GAFOOR
 SMT.K.S.SUDHA
 SRI.K.J.GLADIS

RESPONDENTS :

1. STATE OF KERALA,
 REPRESENTED BY DISTRICT COLLECTOR,
 COLLECTORATE, ERNAKULAM.
2. DEPUTY COMMISSIONER OF EXCISE,
 OFFICE OF THE DEPUTY COMMISSIONER, KACHERIPADY,
 ERNAKULAM.
3. TAHSILDAR (R.R.), N.PARAVUR.

R1 TO 3 BY SR.GOVERNMENT PLEADER SRI.SOJAN JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:-

- | | | |
|---------|---|---|
| EXT.P1 | : | COPY OF DEATH CERTIFICATE. |
| EXT.P2 | : | COPY OF THE REPRESENTATION DTD.18.9.2010. |
| EXT.P3 | : | NOTICE DTD.28.11.2009 FOR ₹64,241/- |
| EXT.P4 | : | NOTICE DTD.28.11.2009 FOR ₹34,369/- |
| EXT.P5 | : | NOTICE DTD.28.11.2009 FOR ₹2,40,729/- |
| EXT.P6 | : | NOTICE DTD.28.11.2009 FOR ₹2,28,649/- |
| EXT.P7 | : | NOTICE DTD.28.11.2009 FOR ₹3,23,703/- |
| EXT.P8 | : | COPY OF LAWYER NOTICE DTD.30.12.2009. |
| EXT.P9 | : | COPY OF REVENUE RECOVERY NOTICE NO.C1-2/2009
DTD.6.2.2010. |
| EXT.P10 | : | COPY OF REVENUE RECOVERY NOTICE NO.C1-3/2009
DTD.6.2.2010. |
| EXT.P11 | : | COPY OF REVENUE RECOVERY NOTICE NO.C1-4/2009
DTD.6.2.2010. |
| EXT.P12 | : | COPY OF REVENUE RECOVERY NOTICE NO.C1-5/2009
DTD.6.2.2010. |
| EXT.P13 | : | COPY OF REVENUE RECOVERY NOTICE NO.C1-6/2009
DTD.6.2.2010. |
| EXT.P14 | : | COPY OF SALE DEED NO.4038/03 S.R.O. NORTH PARUR. |
| EXT.P15 | : | COPY OF SALE DEED NO.3323/77 S.R.O. NORTH PARUR. |
| EXT.P16 | : | COPY OF SALE DEED NO.829/91 S.R.O. NORTH PARUR. |
| EXT.P17 | : | COPY OF SALE DEED NO.5427/93 S.R.O. NORTH PARUR. |
| EXT.P18 | : | COPY OF PARTITION DEED NO.4198/2003. |

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.7973 of 2010

Dated this the 17th day of July, 2015

JUDGMENT

This Writ Petition was originally filed by one Bhanumathi, widow of late Sri.Raman Pankajakshan, who was the licensee of certain toddy shops under Paravur Range, during the period from 1971 to 1975. Sri.Raman Pankajakshan died on 8.8.1993, which is evident from Ext.P1 death certificate. On 14.4.2013, Bhanumathi, the sole petitioner in this Writ Petition died and her legal heirs, namely the children of late Raman Pankajakshan were impleaded as additional petitioners 2 to 9 by order dated 31.5.2014 in I.A.No.6844 of 2014. Though the name of one Anish Kumar, son of late Raman Pankajakshan, was also shown in the cause title to I.A.No.6844 of 2014 his name was struck off at the time of filing the said application.

2. During the life time of Raman Pankajakshan, revenue recovery proceedings were initiated at the instance of the 2nd respondent for recovering the Abkari dues in respect of the toddy shops conducted by him. A certain extent of land owned by him

was also sold in the revenue recovery proceedings. According to the petitioners, Raman Pankajakshan died leaving 144.750 cents of land in Sy.No.337/1 of North Paravur Village, which was also sold in the year 1999, in the revenue recovery proceedings initiated on behalf of the 2nd respondent. Therefore, the petitioners would contend that, the entire land left by the Raman Pankajakshan was sold in public auction and that his legal heirs have never inherited any land from late Raman Pankajakshan.

3. Gong by the averments in the Writ Petition, in the year 2009, the original petitioner Bhanumathi received 4 communications from the 2nd respondent intimating that there are further arrears due from late Raman Pankajakshan and in order to avoid any recovery proceedings she should deposit the amount mentioned therein. On receipt of such notices, she submitted Ext.P2 reply dated 18.9.2009, pointing out that she is under the care and protection of her children and since the entire property owned by late Raman Pankajakshan had already been sold in public auction conducted under revenue recovery proceedings, she may be exonerated from any further proceedings. Without considering Ext.P2 reply, Exts.P3 to P7

recovery notices were issued by the 2nd respondent for a total sum of ₹10,55,366/- towards Abkari arrears for the period 1974-75, 1972-73, 1971-73, 1973-74, 1972-73. On receipt of Exts.P3 to P7 notices, she along with her children, who are additional petitioners 2 to 9 herein, caused to issue Ext.P8 lawyer notice to the 2nd respondent pointing out that, the legal heirs of late Raman Pankajakshan never inherited any assets owned by him and in such circumstances, their personal assets cannot be proceeded against for the amount due from late Raman Pankajakshan. They have also raised a contention that, the recovery proceedings initiated against them are barred by the law of limitation. In spite of Ext.P8 lawyer notice, the 3rd respondent caused to issue Exts.P9 to P13 revenue recovery notice dated 8.2.2010 for a total sum of ₹10,55,366/-. It is aggrieved by Exts.P9 to P13 recovery notices this Writ Petition was filed seeking a writ of certiorari to quash the revenue recovery proceedings initiated against Bhanumathi based on the aforesaid demand notices for recovery of the abkari dues of late Raman Pankajakshan and for a declaration that she is not liable to pay the arrears of late Raman Pankajakshan in the absence of any inheritance of movable or

immovable properties and since the properties left by late Raman Pankajakshan have already been sold under public auction towards the said arrears. She has also sought for a declaration that, the revenue recovery proceedings initiated by the 3rd respondent on behalf of the 2nd respondent pursuant to Exts.P3 to P7 are barred by limitation.

4. A counter affidavit has been filed on behalf of the 1st respondent contending that, after the death of late Raman Pankajakshan revenue recovery proceedings were initiated against Bhanumathi as well as additional petitioners 2 to 9 herein on the basis of a revenue recovery requisition dated 15.1.2010. The legal heirs of late Raman Pankajakshan were issued with demand notices through Village Officer concerned and it was at that point of time Bhanumathi approached this Court in this Writ Petition and obtained stay of the revenue recovery proceedings. In view of the stay granted by this Court no steps were taken against her. In page 3 of the counter affidavit the 1st respondent has also furnished the details of the property sought to be proceeded against, which are in the name of Bhanumathi and additional petitioners 2 to 9, who are the

legal heirs of late Raman Pankajakshan. The details of the property furnished in page 3 of the counter affidavit reads thus;

- (1) 54 cents of land in Sy.337/1 of Paravur Village:- Sri.Balachandran, S/o.Thoppil Velu, was the purchaser. He sold the land to Bhanumathi & others (Doc.No.4038/03 of SRO, Paravur).
- (2) 8 cents of land in Sy.337/1 of Paravur Village:- Sri.Velayudhan, was the purchaser and he sold it to Sri.Soman, S/o.Late Pankajakshan (as per Doc.No.3323/77 of SRO, Paravur).
- (3) 60 cents of land in Sy.337/1 of Paravur Village:- Sri.K.E.Ramachandran was the purchaser and he sold it to Sri.Aneeshkumar, S/o.Late Pankajakshan (as per Doc.No.829/91 of SRO, Paravur).
- (4) 58 cents of land in Sy.337/1 of Paravur Village:- Sri.Velayudhan, was the purchaser. Out of 58 cents 21.750 cents of land was sold to Sri.Pradeep, S/o.Late Pankajakshan (as per Doc.No.5427/93 of SRO, Paravur).

In page 4 of the counter affidavit, the 1st respondent has also furnished the details of the property owned by the legal heirs of late Raman Pankajakshan having a total extent of 1.39.920 acres and the particulars furnished therein reads thus:-

Table	Name	Extent	Thandaper
A	Bhanumathi (wife)	14.170 cents	24733
B	Vijayan (Son)	13.780 cents	24734
C	Soman (Son)	14.220 cents	24735
D	Prakashan (Son)	14.100 cents	24736
E	Pradeepkumar (Son)	13.990 cents	24737
F	Aneeshkumar (Son)	13.040 cents	24738
G	Sulatha (Daughter)	14.1380 cents	24739
H	Sunitha (Daughter)	13.990 cents	24740
I	Ambily (Daughter)	13.990 cents	24741
J	Anitha (Daughter)	14.260 cents	24742
	Total	1.39.920 Acres	

The 1st respondent has also stated that, the aforesaid lands are the lands attached and sold in public auction in order to realise the abkari arrears of late Raman Pankajakshan and his wife and children purchased those lands from the bidders vide Doc.Nos.4038/03, 3323/77, 829/91 and 5427/93 of SRO, Paravur.

5. The additional petitioners 2 to 10 have also filed a reply affidavit producing therewith the copy of Doc.Nos.4038/03, 3323/77, 829/91 and 5427/93 of SRO, Paravur referred to in the counter affidavit of the 1st respondent, as Exts.P14 and P17. They have also produced as Ext.P18, a partition deed bearing No.4198/2003 of SRO Paravur by which the properties covered by

Exts.P14 to P17 were partitioned among all the legal heirs of late Raman Pankajakshan.

6. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Exts.P9 to P13 demand notices issued against late Bhanumathi, the original writ petitioner, as well as against the additional petitioners 2 to 9, for recovering the abkari dues payable by late Raman Pankajakshan.

7. The fact that late Raman Pankajakshan was a defaulter of abkari dues is not in dispute. It is also an admitted fact that the properties owned by him were under order of attachment in the revenue recovery proceedings initiated against him. As evident from Ext.P1 death certificate, Raman Pankajakshan died on 8.8.1993. From the pleadings and documents on record it is evident that, all the properties of Raman Pankajakshan sold in the revenue recovery proceedings for realising abkari dues were purchased, either by his wife Bhanumathi or by his children. Out of four such transactions, three were during the life time of the defaulter namely, Raman Pankajakshan. As evident from Ext.P15 document, namely, Doc.No.3323/77 of SRO, Paravur dated 25.10.1977, the 3rd

additional petitioner herein, purchased the land in Sy.337/1 of Paravur Village sold in public auction to one Velayudhan and Venu and going by the recitals in that document the 3rd additional petitioner was aged 25 years and was doing business. As evident from Ext.P16 document, namely, Doc.No.829/91 of SRO, Paravur dated 28.2.1991, one Anish Kumar, son of late Raman Pankajakshan, whose name was stuck off from the cause title to I.A.No.6844 of 2014 at the time of filing the said application, purchased 60 cents of land in Sy.337/1 of Paravur Village sold in public auction to one K.E.Ramachandran and going by the recitals in that document the said Anish Kumar was only a student aged 25 years and that the sale consideration was paid by his uncle one Dr.Radhakrishnan. As evident from Ext.P17 document, namely, Doc.No.5427/93 of SRO, Paravur dated 1.11.1993, the additional 9th petitioner herein purchased 21.750 cents out of 58 cents of land in Sy.337/1 of Paravur Village sold in public auction to one Velayudhan and going by the recitals in that document the 9th additional petitioner was aged 28 years and was doing business. Similarly, as evident from Ext.P14 document, namely, Doc.No.4038/03 of SRO,

Paravur dated 31.7.2003, Bhanumathi and her children purchased 54 cents of land in Sy.337/1 of Paravur Village sold in public auction to one Balachandran. It is pertinent to note at this juncture that, the tenor of Ext.P2 reply dated 18.9.2009 submitted by Bhanumathi before the 2nd respondent was that, she was under the care and protection of her children and in the Writ Petition she has absolutely no case that, she was having any independent income. Now, as evident from Ext.P18 partition deed bearing No.4198/2003 of SRO Paravur dated 8.8.2003, the properties covered by Exts.P14 to P17 were also partitioned among all the legal heirs of late Raman Pankajakshan.

8. It is well settled that, for recovering any amount due from a deceased defaulter, recovery proceedings can be initiated against the property inherited by his legal heirs. While deciding that issue, the crucial aspect that has to be considered is as to whether the properties in the hands of the legal heirs, which are sought to be proceeded against, are the properties inherited by them from the deceased defaulter or the self-acquired property of the legal heirs. In order to bring a property within the sweep of 'self-acquired'

property the legal heir of the deceased defaulter has to establish with cogent and convincing materials that, at the time of acquisition of that property he had sufficient independent income. Failing which a presumption can be drawn that, the said property was acquired from and out of the income of the defaulter, with an intention to defraud his creditors.

9. It is pertinent to note that, though Exts.P3 to P7 demand notices were issued against Bhanumathi, the original writ petitioner petitioner as well as other legal heirs of late Raman Pankajakshan, additional petitioners 2 to 9 have not chosen to challenge the recovery proceedings. This is in spite of the fact that, their properties were also proceeded against in the revenue recovery proceedings. Instead, their mother Bhanumathi approached this Court in this Writ Petition and obtained an order of stay of the all recovery recovery proceedings pursuant to Exts.P9 to P13 notices. Resultantly no revenue recovery proceedings were initiated against additional petitioners 2 to 9 though they have not challenged the recovery proceedings. A reading of the counter affidavit filed by the 1st respondent would make it explicitly clear that, under the cover of

order of stay granted by this Court in this Writ Petition, the entire recovery proceedings initiated against their property was also kept in abeyance.

10. Though it is contended in the Writ Petition that the recovery proceedings initiated pursuant to Exts.P3 to P7 demand notices are barred by limitation, there is total dearth of materials to substantiate the same and as such this Court is not in a position to consider the aforesaid contention. It has to be noticed that, the revenue recovery proceedings initiated against the legal heirs of late Raman Pankajakshan are only continuation of the recovery proceedings against the defaulter in which his entire properties were attached and proceeded against.

11. In such circumstances, this Writ Petition is disposed of with the following directions:-

(1)The 1st respondent shall consider the question whether the recovery proceedings initiated pursuant to Exts.P3 to P7 notices are barred by limitation and also whether the properties covered in Exts.P14 to P17 and later partitioned vide Ext.P18 are self-acquired properties of the legal heirs of the deceased defaulter Raman Pankajakshan, which

cannot be proceeded against for recovering the abkari dues of late Raman Pankajakshan, and take an appropriate decision, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment, with notice to them and after affording them an opportunity to establish their case with supporting materials.

(2)Till such decision is taken, the interim order granted by this Court staying the revenue recovery proceedings pursuant to Exts.P9 to P13 notices shall continue to be in force.

No order as to costs.

ANIL K.NARENDRAN, JUDGE

skj