

PETITIONER:  
STATE OF KERALA & ANR.

Vs.

RESPONDENT:  
RADHAMANY

DATE OF JUDGMENT: 23/08/1996

BENCH:  
RAMASWAMY, K.  
BENCH:  
RAMASWAMY, K.  
G.B. PATTANAIK (J)

ACT:

HEADNOTE:

JUDGMENT:

### O R D E R

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the judgment and order of the High Court of Kerala dated February 14, 1989 made in Second Appeal No.77/83. The admitted facts are that one Vasudevan was an Abkari contractor for the year 1968-69. He fell into arrears in payment of Abkari dues as on April 1, 1969. For the recovery of a sum of Rs.35,497/-, proceedings were initiated under the Kerala a Revenue Recovery Act, 1968 [for short, the "Act"] on May 31, 1969. Ex.P-1, a demand notice was issued on the defaulter on June 30, 1969 for 3 acres 97 1/2 cents of the agriculture land in favour of his wife. On February 22, 1969, the Tehsildar served a notice of attachment of the schedule property for recovery of the dues. Challenging the notice of attachment, the respondent filed Suit O.S. No.94 of 1977 which was decreed. On appeal filed by the respondent, by the impugned order dated February 14, 1989 the learned Single Judge has held that only if a demand notice under Section 7 had been served on the defaulter and the transfer was followed thereafter, the person becomes defaulter and the arrears could be recovered. Thus service of demand notice is a condition precedent for recovery of arrears. In the absence of such a notice, the presumption under Section 44 is inapplicable is valid in law. The question, therefore, is whether the view taken by the High Court is correct in law?

Section 44 of the Act reads as under:

"44. Effect of engagements and transfers by defaulter- (1) any engagement entered into by the defaulter with any immovable property after the service of the written demand on him shall not be bonding upon the Government.

(2) Any transfer of immovable

property made by a defaulter after public revenue due on any land from his has fallen in arrears, with intent to defeat or delay the recovery of such arrears, shall not be binding upon the Government.

(3) Where a defaulter transfers immovable property to a near relative or for grossly inadequate consideration after public revenue due on any land from has fallen in arrears, it shall be presumed until the contrary is proved that such transfer is made with intent to defeat or delay the recovery of such arrears and the Collector or the authorised officer may, subject to the orders of a competent court, proceed to recover such arrears of public revenue attachment and sale of the property so transferred, as if such transfer had not taken place:

Provided that, before proceeding to attach such property, the Collector or the authorised officer shall-

(i) give default an opportunity of being heard; and

(ii) record his reasons therefor in writing.

Explanation- For the purpose of this section, "near relative" includes husband, wife, father, mother, brother, sister, daughter, stepson, step daughter, uncle, aunt, son-in-law, nephew or niece of the transferor."

The effect of engagements & transferors by the transferee has been enumerated in sub-sections (1) to (3) of the Act. Each sub-section is independent of the transaction dealt with by Section 44. As regards sub-section (2), any transfer of immovable property made from him defaulter, after public revenue due on any land from him has fallen in arrears, sale was with intent to defeat or delay the recovery of such arrears, the sale shall not be binding upon the Government. The crucial question of application of sub-section [2] is as to the date when the arrears have land over which the recovery could be fastened. In view of the admitted fact that arrears had become due as on April 1, 1969 and the lands came to be sold subsequent to said date, the sub-section [2] stands attracted and, therefore, transfer of immovable property was made by the defaulter was with an intention to delay or defer the recovery of such arrears. Therefore, such a sale does not bind the Government.

Sub-section [3] contemplates another situation; where a defaulter transfers immovable property to a near relation or for grossly inadequate consideration, after public revenue on any land from his has fallen in arrears, it shall be presumed that such transfer was made with intention to defeat or delay the recovery of such arrears. The Collector or authorised officer may, subject to the orders of the competent authority, proceed to recover such arrears by attachment and sale of the property, as if such transfer had not taken place. The sale must be in favour of a near

relation or for grossly inadequate consideration. This should be, if the public revenue is due on any land from the defaulter who is in arrears, prior to sale. In such a case, it shall be presumed, unless contrary is proved, that such a transfer was made with intention to defeat and delay the recovery of such arrears. The State is entitled to ignore the sale and would proceed to recover the arrears by sale of the said lands.

The question in this case is: whether without a prior notice of demand, a notice of attachment having been issued under sub-section [3] has any application? In our view the High Court has committed grave error of law. Sub-section [3] does not contemplate of prior service of such a notice. It contemplates that arrears should become due before such a sale was made and the sale must be in favour of near relation or for grossly inadequate consideration. If the consideration was the statutory presumption raised is that the transfer was made with intention to delay or defer recovery of arrears. Such a sale, therefore, does not bind the Government. The recovery official is entitled to proceed against that property as if such transfer has not taken place. The burden to prove contrary is on the defaulter and the transferee. What is a grossly inadequate consideration to a stranger would always be a question of fact each case.

Therefore, prior service of notice of demand of arrears or attachment before sale is not a pre-condition to deny the statutory presumption available under sub-section [3] of Section 44. The High Court, therefore, was not right in its conclusion that prior notice of demand of arrears or attachment before sale is a pre-condition.

The appeal is accordingly allowed. The judgment and order of the High Court stands reversed. We restore the decree of the appellate Court dismissing the suit. No costs.