
(1967) 04 SC CK 0036
In the Supreme Court Of India
Case No : C.A. No. 658 of 1966

Additional Tahsildar, Nagod

APPELLANT

Vs

Gendalal

RESPONDENT

Date of Decision : 12-04-1967

Acts Referred:

Central Provinces and Berar Sales Tax Rules, 1947 — Rule 67
Constitution of India, 1950 — Article 226
East Punjab General Sales Tax Act, 1948 — Section 16

Citation : (1968) J LJ 97 : (1968) MhLj 250

Hon'ble Judges : V. Ramaswami, J; S.M. Sikri, J; J.C. Shah, J

Bench : Full Bench

Advocate : B. Sen and R.P. Kapoor, for I.N. Shroff, for the Appellant; J.M. Thakur, B. Dutta, J.B. Dadachanji and G.C. Mathur, for J.B. Dadachanji and Company, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—This appeal is brought by special leave, from the judgment of the High Court of Madhya Pradesh dated October 1, 1964, in Miscellaneous Petition No. 107 of 1963 quashing three assessment orders dated May 31, 1956, May 6, 1957 and August 9, 1957 by grant of a writ under Article 226 of the Constitution.

2. In or about 1947, the Respondent entered into a partnership with one Chandratan Sadani and one Lalji Ghelabhai to carry on the business of manufacturing and selling utensils and brass-ware in the name and style of Bharat Metal Industries, Raipur, hereinafter referred to as -'the said firm". The said firm was duly registered as a dealer under the Central Provinces and Berar Sales Tax Act, 1947 (hereinafter referred to as the 'Act'). In May 1954, the Sales Tax Officer, Raipur started proceedings for assessment of the said firm for the years 1949-50, 1950-51 and 1951-52. However, discovering that he had no jurisdiction to assess the said firm, he transferred the cases to the Assistant

Commissioner of Sales Tax who made the orders of assessment dated May 31, 1956, May 6, 1957 and August 9, 1957. Since the said firm did not pay the taxes, the revenue recovery certificates, were sent to the Additional Tahsildar, Raipur, Appellant No. 1 who issued to the Respondent three notices of demand dated March 15, 1963. On April 8, 1963 the Respondent moved the High Court of Madhya Pradesh under Article 226 of the Constitution for quashing the aforesaid assessment orders. Two grounds were pressed by the Respondent in support of the petition: (i) that there was dissolution of partnership on September 13, 1952 and when the firm had ceased to exist it could no longer be assessed and the impugned orders of assessment were therefore void, (ii) In each case, the proceedings for assessment were initiated long after the expiry of 3 years from the relevant quarters in the High Court. The High Court took the view that there was no substance in the first ground but the second ground relating to limitation was well founded and the proceedings for assessment were barred by limitation because they were initiated long after the expiry of 3 years from the relevant quarters in the two assessment years. The High Court accordingly allowed the petition of the Respondent and quashed three assessment orders and also directed the Appellants not to enforce the notices of demand dated March 15, 1963.

3. On behalf of the Appellants Mr. B. Sen put forward the argument that the High Court was wrong in holding that the assessment proceedings were barred by limitation and the interpretation put by the High Court on Rule 67 of the Rules framed under the Act was not correct. It is not necessary, in this appeal, to decide this question because we are of opinion that the Respondent is entitled to succeed on the ground that the orders of assessment were void because there was a dissolution of the partnership on September 13, 1952 and the partnership had ceased to exist long before the assessment orders were made. On this point the High Court expressed the view that the liability of a partnership firm of assessment of sales tax in respect of sales made by it did not cease upon its dissolution. The High Court has relied upon its previous decision in *Ghanshyamdas v. Sales Tax Officer* 1964 MPLJ 58 : 15 STC 129. But a different view has been taken by this Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, in which the Respondent-firm was dissolved on July 11, 1953, and an intimation of the dissolution was sent to the sales tax department u/s 16 of the East Punjab General Sales Tax Act, 1948, on July 18, 1953. In the meantime, on May 30, 1953 the firm had been assessed to sales tax in respect of its turnover for the period October 4, 1952, to March 31, 1953. That assessment was quashed and the Sales Tax Officer made a fresh assessment on that turnover on September 3, 1955. At the relevant time there was no provision expressly empowering the assessing authority to assess a dissolved firm in respect of its turnover before its dissolution. It was in these circumstances held by this Court that the order of assessment dated September 3, 1955, was void. It was pointed out that though under the partnership law a firm is not a legal entity but only consists of individual partners for the time being, for tax law, income tax as well

as sales tax, it is a legal entity. On the dissolution of the firm it ceases to be a legal entity, and on principle, thereafter, unless there is a statutory provision permitting the assessment of a dissolved firm, there is no longer any scope for assessing the firm, which ceases to have legal existence. There cannot also be a distinction in principle between an assessment made on a firm under a proceeding initiated before its dissolution and one made in a proceeding started after the dissolution. In either case, unless there is an express provision, no assessment can be made on a firm which has lost its character as an assessable entity. In the course of its judgment this Court expressly overruled the decision of the Madhya Pradesh High Court in *Lalji Vs. The Assistant Commissioner, Sales Tax*, where a different view had been taken. In accordance with the view expressed by this Court in *State of Punjab Vs. Jullunder Vegetables Syndicate*, it must be held that the three orders of assessment dated May 31, 1956, May 6, 1957 and August 9, 1957 of the said firm were legally invalid and were rightly quashed by the High Court by grant of a writ.

4. It was, however, contended on behalf of the Appellants that Lalji, another partner of the said firm had applied for the grant of a writ under Article 226 of the Constitution with regard to the three assessment orders and his application was dismissed by the Madhya Pradesh High Court on July 8, 1958 (See *Lalji Vs. The Assistant Commissioner, Sales Tax*). The argument was therefore pressed that that decision operated as *res judicata* and the present writ petition filed by Gendalal, another partner of the said firm should be dismissed on this ground. In support of this proposition reference was made to the decision of this Court in *Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others*, in which it was pointed out that it would not be right for the Courts to ignore the principle of *res judicata* altogether in dealing with writ petitions filed by citizens alleging the contravention of their fundamental rights, and that consideration of public policy cannot be ignored in such cases. In the present case, however, the principle of *res judicata* is not applicable, because the previous judgment was against Lalji who was one of the partners of the said firm. The partnership was dissolved in the present case on September 13, 1952 and after the dissolution of the partnership there is no question of agency as between the partners and the decision in the previous writ petition against Lalji cannot be binding as regards the other partner, Gendalal. The principle of the doctrine of *res judicata* is that judgments and decrees bind only parties and privies. To make a person a privy he must have acquired an interest in the subject-matter of action by inheritance, succession or purchase subsequently to the action or he must hold the property sub-ordinately, i. e. as a sub-lessee. In the present case, Gendalal does not claim his interest in the partnership through Lalji and it follows therefore that the principle of *res judicata* cannot be invoked in this case. We accordingly hold that counsel for the Appellants is unable to make good his argument on this aspect of the case.

5. For these reasons we hold that this appeal must be dismissed, but in the circumstances of the case there will be no order as to costs

Appeal dismissed.