(1996) 09 MP CK 0081

In the Madhya Pradesh High Court

Case No : LPA No. 88 of 1988

BALCHAND MALAIYA and Others — APPELLANT

Vs

UNION OF INDIA and Others — RESPONDENT

Date of Decision : 07-09-1996

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 80
Income Tax Act, 1961 — Section 226, 293

Citation : (1997) 142 CTR 74

Hon'ble Judges : S. K. Kulshrestha, J

Bench : Division Bench

Judgement

S. K. KULSHRESTHA, J. :

This appeal has been filed under cl. 10 of the Letters Patent against the judgment dt. 30th November, 1988 of the learned Single Judge in First Appeal No. 218/84 and the consequent decree by which the judgment and decree dt. 6th August, 1984 passed by the learned District Judge, Sagar, in Civil Suit No. 5-B/84 have been affirmed.

2. The plaintiffs are the trustees of Singhai, Karelal, Kundanlal Trust of which 25 per cent income is utilised for charitable purposes and remaining 75 per cent, accrues to its beneficiaries Smt. Gulab Bai and Tarabai. A notice under s. 80 of the CPC was sent to defendants before filing of the present suit.

3. The plaintiffs filed a suit for recovery of Rs. 47,196 from the respondents on the averments that the respondents No. 1 & 2 illegally obtained from the account of the plaintiffs trust in respondent No. 3 bank, a sum of Rs. 36,063, even though there were no tax dues against the plaintiff trust. The defendants Nos. 1 & 2, the Union of India and the ITO, in that written statement averred that the Tribunal had set aside the assessment framed against the trust and had directed separate assessment of the trust and the trustees. The amount was recovered from the current account of the trust with Central Bank of India, Sagar on 4th February, 1977 against the tax dues of the trust and/or its beneficiaries under s.

226(3) of the IT Act, 1961. The defendants have also furnished the break-up of the amount due for asst. yrs. 1958-59 to 1962-63. The defendant No. 3 has averred in his written statement that the said defendant was bound by the notice issued by the IT Department under s. 226(3).

4. The trial Court held that the Income Tax dues from the successors of Kundanlal who are the beneficiaries of the trust could be recovered from the plaintiff trust, it was not necessary to give any notice to the trust. As the beneficiaries Tarabai and Gulabbai have not entered the witness-box to deny the service of such a notice, they must have received the notice and further that the decision dt. 3rd November, 1968 of this High Court in MCC No. 31/1966 was binding on the trust. Accordingly, the trial Court dismissed the suit by its judgment dt. 6th August, 1984 in CS No. 5-B/84.

5. Aggrieved by the said judgment of the trial Court, the plaintiffs preferred an appeal to this Court which has been dismissed by the learned Single Judge of this Court by his impugned order and decree. Before the learned Single Judge, a preliminary objection was raised that s. 293 of the IT Act, 1961 barred the jurisdiction of the civil Court and, therefore, the suit itself was not competent. The learned Single Judge, accordingly, dismissed the suit on the ground that in view of s. 293 of the Act, the civil Court had no jurisdiction to entertain such a suit. Hence, this Letters Patent Appeal has been filed. The learned counsel for the appellants has vehemently argued that for the purposes of jurisdiction, only the averments in the plaint have to be looked into and in any case the issue of jurisdiction can be tried only as one of the issues. According to the learned counsel, the appeal ought not to have, therefore, been dismissed on such a preliminary issue.

6. It is clear from the pleadings of the parties that the plaintiffs were claiming amount from the IT Department, while in the written statement, the IT Department had clearly referred to s. 226(3) of the IT Act as the source of their power and authority for the action taken by them. All issues arising out of the pleadings had been examined and tried by the learned trial Court and the trial Court on appreciation of the evidence on record had come to the conclusion that course adopted by the defendants was legal and had the necessary sanction of law. The issue of jurisdiction was neither raised nor decided by the trial Court and as such there was no occasion for the trial Court to try the said issue.

7. The preliminary objection about the jurisdiction of the civil Court for the first time raised before this Court in the first appeal. Since the issue of jurisdiction can be raised at the appellate stage also and especially when no evidence in this behalf was necessary, the learned Single Judge came to the conclusion that the suit was barred in view of s. 293 of the IT Act, 1961, which reads as under :

"Sec. 293. No suit shall be brought in any civil Court to set aside or modify any (proceeding taken or) order made under this Act; and no prosecution, suit or other proceeding shall lie against (the Government or) any officer of the

Government for anything in good faith done or intended to be done under this Act."

8. At the appellate stage it was apparent from the record that the defendant No. 2 had taken recourse to s. 226(3) of the IT Act, in relation to dues pertaining to various assessments of the two beneficiaries of the trust as also the trust. Sec. 293 creates a bar of suit against the proceedings taken or order made under the Act, and, therefore, the action of the defendant No. 2, being in the nature of an order or proceeding under the Act, suit was not maintainable. It was, therefore, not necessary for the learned Single Judge to consider the appeal on other issues and the judgment and decree do not call for any interference.

9. In the result, this appeal is dismissed and the judgment and decree of the trial Court as also of the learned Single Judge are affirmed. In the facts and circumstances of the case, however, we leave the parties to bear their respective costs of this appeal.

