(1996) 09 MP CK 0057

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 88 of 1988

Balchand Malaiya and Others APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:
Income Tax Act, 1961 — Section 226(3), 293

Citation : (1998) 231 ITR 274

Hon'ble Judges : A.K. Mathur, C.J;Shahi Kant Kulshreshtha, J

Bench : Division Bench

Advocate : Kishore Shrivastava, for the Appellant; Abhay Sapre, for the Respondent

Judgement

S. K. Kulshrestha, J.—This appeal has been filed under Clause 10 of the Letters Patent against the judgment dated November 30, 1988, of the learned single judge in First Appeal No. 218 of 1984 and the consequent decree by which the judgment and decree dated August 6, 1984, passed by the learned District Judge, Sagar, in Civil Suit No. 5-B of 1984 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 the remaining 75 per cent. accrues to its beneficiaries, Smt. Gulab Bai and Tarabai. A notice u/s 80 of the CPC was sent to the defendants before filing the present suit.

3. The plaintiffs filed a suit for recovery of Rs. 47,196 from the respondents on the averments that respondents Nos. 1 and 2 illegally obtained from the account of the plaintiff trust in respondent No. 3-bank, a sum of Rs. 36,063, even though there were no tax dues against the plaintiff trust. Defendants Nos. 1 and 2, the Union of India and the Income Tax Officer, in their written statement averred that the Income Tax 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 the Central Bank of India, Sagar, on February 4, 1977, against the tax dues of the trust and/ or its

beneficiaries u/s 226(3) of the Income Tax Act, 1961. The defendants have also furnished the break up of the amount due for the assessment years 1958-59 to 1962-63. Defendant No. 3 has averred in its written statement that the said defendant was bound by the notice issued by the Income Tax Department u/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, that 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 dated November 3, 1968, of this High Court in Miscellaneous Civil Case No. 31 of 1966 was binding on the trust. Accordingly, the trial court dismissed the suit by its judgment dated August 6, 1984, in C. S. No. 5-B of 1984.

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 Section 293 of the Income Tax 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 Section 293 of the Act, the civil court had no jurisdiction to entertain such a suit. Hence, this Letters Patent Appeal has been filed. 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 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 Income Tax Department, while in the written statement, the Income Tax Department had clearly referred to Section 226(3) of the Income Tax 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 the course adopted by the defendents 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 was 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 Section 293 of the Income Tax Act, 1961, which reads as under :

"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 defendant No. 2 had taken recourse to Section 226(3) of the Income Tax Act, in relation to dues pertaining to various assessments of the two beneficiaries of the trust as also the trust. Section 293 creates a bar of suit against the proceedings taken or order made under the Act, and, therefore, the action of defendant No. 2, being in the nature of an order or proceeding under the Act, the 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.