(1930) 04 PAT CK 0015

In the Patna High Court

Bhagalpur Municipality APPELLANT

Vs

Maulavi Faik RESPONDENT

Date of Decision : 03-04-1930

Acts Referred:
Presidency Small Cause Courts Act, 1882 — Section 25

Citation : AIR 1930 Patna 370

Hon'ble Judges : Scroope, J

Bench : Division Bench

Judgement

Scroope, J.—The suit out of which this application u/s 25, Small Cause Court Act, arises was brought by the Bhagalpur Municipality as plaintiff for recovery of municipal holding tax for four years 1925-26, 1926-27, 1927-28 and 1928-29 from the defendant in respect of holding No. 21 (lower Jamtikri Road, Bhagalpur). The Small Cause Court dismissed the suit accepting the defendant''s plea of nonliability. The defendant alleged that the holding in suit did not belong to him nor did he occupy it. The municipality produced the assessment registers for the years in suit and these show that the holding stands in the name of Fanik as owner.

2. Admittedly Fanik is dead and admittedly the defendant is his son and if not the sole, certainly one, of his heirs. The defendant alleged that the holding was only within his father''s zamindari but that it was owned and occupied by certain mukararidars who used to pay the tax. The Court below held that there was no evidence worth the name to contradict the defendant on this point; but here the Court below was obviously in error as there is the municipality''s own assessment register and the presumption is that the assessment list was duly published at the time the assessment was made and after due publication became final. A mare oral assertion of the defendant that somebody else was all along responsible for the municipal tax on this holding cannot carry any weight against the assesmant register. There may be no evidence that the tax was ever realised from the defendant or his father but in the face of the assessment roll it is for

the defendant to prove that the tax has been realised from somebody else. The learned Court below also mikes a clear error of record when he says in his judgment that the plaintiff''s one witness who is the Assistant Tax Daroga does not know who is in possession of the holding. This witness distinctly states that the defendant is in possession. It is true that he states that ha cannot say whether the defendant is alone in possession; but the point is that the lower Court has overlooked the fact that on the evidence the defendant must be held to be one of the parsons actually in possession of the holding.

3. Apart from the question of occupation, holding tax as in this case is payable by the owner of the holding u/s 100(l), Municipal Act; occupation is not the test of liability; only in certain cases which do not concern us here the occupier becomes liable and he can deduct the tax from the rant: vide Section 133. It is the holding that is taxed; u/s 123(2) the demand notice is presented to the person "liable to pay the same" the fact that the defendant''s father''s name and not the defendant''s appears in the assessment list will not absolve him from liability.

4. On the death of the father Fanik the heirs, of whom defendant was one, were bound to give notice in writing within a year of the death, of their succession as heirs to Fanik: vide Section 108(1). Had that been done the necessary alteration would have been made in the assessment list u/s 107(b) and it would have shown the name of defendant as either sole owner or as part owner with others, thus there would have been no difficulty. The defendant admits the holding is within his father''s zamindari. The assessment list is not the final or sole text of liability; it may have become out of date as here through no fault of the municipality, that does not debar them from Recovering the tax from the person liable to pay the same, in this case the heir of the former owner. Undoubtedly Fanik was liable for the tax as owner. In my opinion the defendant as one of the heirs of Fanik, the original assessee, is liable to the extant of his inherited share for the tax on the holding.

5. I accordingly set aside the order of the Court below and direct that the suit be decreed with costs against the defendant to the extent of his right as hair to the property of Fanik.

