

(1970) 12 DEL CK 0009
In the Delhi High Court
Case No : Suit Appeal No. 506 of 1968

C.S. Loganathan	Vs	APPELLANT
P.L. Kapur and Another		RESPONDENT

Date of Decision : 09-12-1970

Acts Referred:

Citation : (1972) 83 ITR 430

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : C.K. Daphtary, Sarvashri, R.N. Dixit and P.S. Khera, for the Appellant;

Judgement

B.C. Misra, J.

(1) This petition (I.A. 1092 of 1970) has been moved by the plaintiff in Suit No. 506 of 1968 under the following circumstances. On 5th December, 1968, the plaintiff instituted a suit for recovery of Rs 10,61,134.00 on the allegations that the property in dispute, namely, 3, Friends Colony, New Delhi, which was owned by defendants Nos. 1 and 2, had been mortgaged by them with defendant No. 3 on 7th December, 1964 for a sum of Rs. 2 lacs and that the mortgagee had assigned its rights to the plaintiff on 31st August, 1967 and so the plaintiff had become the mortgagee of the said property. It was further alleged in the plaint that the plaintiff had directly advanced to defendants Nos. 1 and 2 a considerable amount of money on security of some shares as well, and that even after the expiry of the period of mortgage, the defendants had not cleared the debts and so the same be realised by sale of the mortgaged movable as well as immovable properties. The suit was contested for sometime and eventually a compromise (dated 12th May, 1969) was arrived at between the parties which was recorded by the Court on 26th May, 1969 and a compromise decree followed the same. One of the terms of the compromise decree was that defendants Nos. 1 and 2 will absolutely sell and convey to the plaintiff the aforesaid immovable property namely, 3, Friends Colony, New Delhi in consideration of adjustment of a sum of

Rs. 8 lacs and if the defendants failed to execute the sale-deed within the period of one month, the plaintiff decree-holder would be entitled to obtain a conveyance of the property through the Court by an officer of the Court appointed in this behalf, executing and registering the sale-deed at the expense of the plaintiff decree-holder. Eventually, by order dated 25th September, 1969, the Court appointed the Registrar of the Court as the officer concerned and directed him to execute and register the sale-deed. After approval of the draft, the sale-deed was engrossed on a stamp paper and executed by the Registrar and it was presented on 3rd January, 1970 to the Sub-Registrar for registration under the Indian Registration Act, but the Sub-Registrar declined to register the same on the ground that the tax clearance certificate had not been obtained and the sale-deed was. however, probably to save the prescribed limitation, presented to the Sub-Registrar again on 2nd May, 1970 and the same is still in his office.

(2) Feeling aggrieved by failure of the Registrar of this Court to obtain registration of the sale-deed from the Sub-Registrar, the plaintiff moved an application (1.A. No. 507 of 1970) for an order compelling the Sub-Registrar to register the document. Reply to the said application was filed on behalf of the Sub-Registrar but the application was withdrawn on 18th August, 1970 with the permission of the Court. However, another application (LA. No. 1092 of 1970) has been moved for the same purpose which has been amended with the leave of the Court granted in 1.A. 1210 of 1970 and the petition as amended has come up before me for disposal. Notice of the application was, by order dated 7th October, 1970, issued to the Attorney-General of India, Commissioner of Income Tax and the Inspector General of Registration, besides of course the parties. No body has appeared on behalf of the Attorney-General, but the petition has been contested on behalf of the Commissioner of Income Tax as well as by the Inspector General of Registration and I have heard the arguments of the learned counsel for the parties.

(3) The obstacle in the way of registration of the sale-deed is created by section 230(A) of the Income Tax Act, 1961 as amended in 1964, which I will reproduce in detail later on and the said provision has prescribed the Income Tax clearance certificate as a condition precedent to registration of sale-deeds worth more than Rs. 50,000.00. The decree holder petitioner contends that the said provision of law is ultra virus of the Constitution and is an unreasonable restriction on the rights of the vendor as well as the vendee in respect of the property under sale and the same contravenes the fundamental rights guaranteed by Article 19(1)(f) and Article 14 of the Constitution. In the alternative, it has been submitted that the language of the provision does not justify its extension to involuntary transfers made under orders of the Court.

(4) The aforesaid submission of the counsel for the petitioner is controverted by the counsel for the Commissioner of Income Tax as well as Inspector General of Registration. They have contended that the provision is infra virus of the

Constitution and is a reasonable restriction. They have also contended that the provision does not make any distinction or admit of any exception between voluntary and involuntary transfers. On the facts of the case, it has been further contended on behalf of the Commissioner of Income Tax that arrears of Income Tax are due from defendants Nos. 1 and 2 (to the Income Tax Departments) for which they have not made any adequate provision and that the decree of the Court is a compromise decree and so it is only a contract between the parties, though it has the command of the Court added to it and as such it cannot be used to circumvent the provisions of law and escape the enforcement of the liability for payment of Income Tax. It has also been urged that the present petitioner had moved the earlier petition (I.A. No. 507 of 1970) on which the Court had made unfavorable observations and so they withdrew the same without liberty to file another and as such the present petition is barred by law and is not maintainable.

(5) Section 230-A of the Income Tax Act, 1961 has been inserted in the Act by section 10 of the Direct Taxes Amendment Act 31 of 1963 dated 6th October, 1964 and the same reads as follows :-

"230-A.-"RESTRICTIONS on registration of transfers of immovable property in certain cases. (1) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions- of clause (a) to clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908 (XVI of 1908), purports to transfer, assign, limit or extinguish the right, title or interest of any person to or in any property (other than agricultural land) valued at more than fifty thousand rupees, no registering officer appointed under that Act shall register any such document, unless the Income Tax Officer certifies that- (a) such person has either paid or made satisfactory provision for payment of all existing liabilities under this Act, the Excess Profits Act, 1940 (XV of 1940), the Business Profits Tax Act, 1947 (XXI of 1947), the Indian Income Tax Act, 1922 (XI of 1922), the Wealth Tax Act, 1957 (XXVII of 1957), the Expenditure-Tax Act, 1957 (XXIX of 1957), and the Gift Tax Act, 1958 (xviii of 1958), or (b) The registration of the document will not prejudicially affect the recovery of any existing liability under any of the aforesaid Acts. (2) The application for the certificate required under sub-section (1) shall be made by the person referred to in that sub-section and shall be in such form and shall contain such particulars as may be prescribed."

(6) The legislative history of the provision is that in the year 1947, after the setting up of the Dominions of India and Pakistan, there was a large exodus of inhabitants from one country to the other and it appeared that many persons, without clearing the Income Tax dues, sold away their properties somehow and crossed the border with the large amount of arrears of Income Tax remaining unrealised. In December, 1947, the Government of Pakistan promulgated an Ordinance which led to a corresponding Ordinance in India in February, 1948 which was followed by an Act known as Payment of Tax (Transfers of Property)

Act 22 of 1949 which came into force on 22nd April, 1949 in substitution of the Ordinance. The effective provision of the same was contained in section 3 thereof which reads as follows :-

"(3)Payment of Taxes before registration of documents. (1) where any document required to be registered under the provisions of clause (a), clause (b), clause (c) or clause (e) of sub-section (1) of section 17 of the Indian Registration Act, 1908, purports to transfer, assign, limit or extinguish any right, title or interest in any property, other than agricultural land belonging to any person to whom this Act applies, no registering officer appointed under the said Act, shall register any such document, unless it is in respect of the person whose right, title or interest in the property is to be so transferred, assigned, limited or extinguished under the terms of the document that

- (A)such person is not liable to assessment or taxation under the Indian Income Tax Act, 1922, the Excess Profits Tax Act, 1940, or the Business Profits Tax Act, 1947; or

(B)such person has either paid or made satisfactory provision for the payment of all existing or anticipated liabilities under any of the Acts specified in clause

(A)of this sub-section; or

(C)the Income Tax Officer is otherwise satisfied that the registration of the anticipated liabilities referred to in clause (b) of this sub-section.

(2)Every Income Tax Officer refusing to issue a certificate under the provisions of sub-section (1) shall make an order of refusal and record his reasons Therefore and, on application made by any person claiming to be affected by such order, shall subject to the payment of such fee as may be prescribed furnish him with a copy of the order."

(7) To work out the said provisions, it had been provided that in the event of transfer taking place in contravention of section 3, the same would not prevail against the Income Tax Officer and it would be open to him, through the Collector, to ignore the transfer and recover arrears of Income Tax from the property, treating it as if it belonged to the assesseds who were transferor of the property and were mentioned in the statement sent by the Income Tax Officer to the Collector. Section 5 of the Act made provisions for an appeal to the Commissioner of Income Tax against the order of the Income Tax Officer refusing to issue certificate. The provisions of the Act were further directed to take effect notwithstanding anything inconsistent therewith contained in any other law. An important feature of the Act was that it applied only to what may popularly be called Evacuees or Intending Evacuees and relevant section 2 of the Act reads as follows :- "Application of Act.

(8) This Act shall apply to any person-

(I)who, on account of the setting up of the Dominions of India and Pakistan, or

on account of civil disturbances or the fear of such disturbances, leaves or has, since the 14th day of August, 1947, left any place in India for any place outside India, or who since, the said date, has been residing in any place outside India; or

(II) who, in the opinion of any of the Income Tax authorities specified in sub-section (1) of section 5 of the Indian Income Tax Act, 1922, or a Custodian of Evacuee property or a Collector, is likely to leave India with the intention of setting in any place outside India, and in respect of whom a declaration that he is a person to whom this Act applies has been received from any such Income Tax authority, Custodian of Evacuee Property or Collector by the registering officer of the "area in which any property belonging to such person is situate."

(9) The circumstances and the reasons which led to the enactment of the said statute show a reasonable necessity for the same and sections 2 and 5 contain sufficient safeguards and no fault can be found with the said statutory provision.

(10) The question now arises whether the restrictions imposed by section 230-A of the Income Tax Act, 1961, are reasonable. It would appear that the said section is not confined in its operation to the Evacuees or Intending Evacuees or any other person going out of India, but it applies to all the citizens who have fundamental rights guaranteed to them. It also does not contain any guidelines for the officer to grant or refuse certificate, nor any provision by way of appeal and the only provision that can be availed of is the power of revision by the Commissioner of Income Tax, at the instance of the assessed u/s 264 of the Income Tax Act, but the power of revision is certainly different from the right of appeal and this again is permissible only to the assessed, yet the person who really feels aggrieved by the bar created by section 230-A is the transferee and he is remediless. It has been urged with some force and justification that the transferor as well as the transferee have got rights in immovable property which they are entitled to convey from one to another and there are some persons who may be dealing only with the purchases and sales of the immovable properties and it could not be intended that a moratorium should be placed on the citizens of the whole country when dealing with their immovable property, should they happen to be assesseds of Income Tax or had not cleared or provided for their Income Tax liabilities. The Income Tax Act makes ample provisions for self-assessment, advance-assessment, provisional assessment, regular assessment and re-assessments of Income Tax as well as for its recovery from the stage of source of payment up to various other stages, and very wide powers are given to the Tax Recovery Officers to realise arrears of Income Tax by attachment and sale of the properties, by appointment of a Receiver and also arrest and detention of the defaulter, the wide amplitude of which would be difficult to find in the civil law obtaining between an ordinary decree-holder and judgment debtors. Section 230 of the Income Tax Act, as enacted in the original Act, 1961, contained ample provisions of tax clearance certificate in respect of persons departing from India. Under the circumstances, the bar on the registration of the

documents in respect of all transactions of the value of Rs. 50,000.00 (where mere notice to Income Tax authorities of the intention to sell or date of registration would have served its purpose to enable the Tax Recovery Officer to take such steps against the defaulter or the property as he liked) appears to be a little onerous. In view of the fact that the object of registration under the Indian Registration Act is very beneficial and is intended to give notice of the transactions to the world and to prevent fraud in dealing with such immovable properties, the frustration of such a benevolent object, in order to assist in the collection of arrears of income tax, would appear to be a little far-fetched.

(11) However, it is not necessary for me in the present case to determine the virus or the reasonableness of the restrictions imposed by section 230-A of the Income Tax Act and the same may come up for consideration in some other appropriate case and I am not deciding the first part of the contention of Mr. C. K. Daphtary, counsel for the petitioner. The question which now remains to be determined is whether section 230-A applies to involuntary sales also. From the scheme of the Act and the Rules framed there under, I have no doubt that it does not apply to involuntary sales. Sub-section (2) of section 230-A states that the person referred to in that sub-section who intends to make a transfer, shall make an application in such form as may be prescribed, and Rule 44-A of the Income Tax Rules, 1962 have prescribed the form 34-A. A perusal of the form leaves no doubt that the same cannot possibly be filled in by the transferee or by an officer of the Court executing the sale-deed since the particulars are either within the special knowledge of the Income Tax Department or the assessed or both, nor is there any machinery provided for compelling the assessed-transferer to supply the said particulars, or at all events do so correctly, and in its absence, the Income Tax Officer would legally be justified in rejecting the application, and the transferee or the decree-holder would be left remedyless as even a revision against the order is, at his instance, not legally possible. To take a few illustrations from the prescribed form, I find that the applicant has to supply the names and addresses of all firms and associations of persons in which he is a partner or has been a Director and to state the existing liabilities of Taxes on the date of the application under the various Acts and also to state the manner, the costs and the source of the costs of the acquisition or constructions of the property. This form is, Therefore, not intended to be used by the transferee or the decreeholder. This must be so in the nature of things as in involuntary sales, the executant of the document is usually not the owner of the property who be an assessed, but it is an officer of the Court who executes the deed under the decree or order of the Court which in law results in transfer of the rights, title and interest of the owner in the property and as such the officer cannot really comply with the requirements expected of the assessed-owner.

(12) There is another aspect of the matter. A judgment-debtor does not repay to the creditor the money borrowed by him on the mortgage, or a person defaults in carrying out a contract for specific performance of sale of immovable property and when the plaintiff has obtained a decree and seeks to enforce the same in

accordance with the provisions of law prescribed in the CPC like Order 21, Rule 32, the judgment-debtor is enabled to disobey the decree and thwart the claim of the decree-holder, since the certificate of tax clearance, which he alone can obtain, is not available. Similarly where the property of the judgment-debtor is attached and sold by public auction in execution of the decree for payment of money and the Court, upon confirmation of sale, issues a certificate of sale and sends the same to the Sub-Registrar for registration in accordance with sub-section (2) of section 89 of the Registration Act. or otherwise a copy of the decree is presented by the claimant before the Sub-Registrar u/s 32 of the Registration Act and if the same is not accompanied by a tax clearance certificate, it would be impossible to complete the conveyance of the property in spite of orders or decree of the Court and the judgment-debtor would succeed in neither paying the arrears of Income Tax to the department nor paying dues to the judgment-creditor and a dishonest judgment-debtor would be in a very happy position. Again, to extend the analogy, if the debtor has become insolvent and the Official Receiver purports to sell his property and executed a sale deed on his behalf and supposing the sale consideration should be more than Rs. 50,000 and there should be arrears of income due against the insolvent, it would be impossible for the Receiver to register the document and the sale cannot be completed. The above illustrations only highlights the position that the words "transfer, assign, limit and extinguish" occurring in section 230-A, have got to be strictly construed and they do not include involuntary transfers made either by operation of law or under orders or decree of the Court. It was stated at the bar that there was no judicial authority construing section 230-A. However, I find that in HIND ESTATES LTD. Vs. C. S. PETERS AND OTHERS., the word Transfer" occurring in the provisions of Payment of Taxes (Transfer of Property) Act, Xxii of 1949) came up for consideration and the virus of the Act was challenged before the Court but Dass Gupta J. held that he was not called upon to decide whether the provisions of law are ultra virus of the Constitution as being vocative of the fundamental rights but his lordship held that the word "transfer" applies fro only transfers by conveyance and did not cover the case of lease.

(13) Therefore, my conclusion is that although the words "transfer, assign, limit, extinguish" occurring in section 230-A of the Act are of a wide amplitude, still in their context, they should, in order to constitute. reasonable restriction, be construed as confined to cases of voluntary deeds executed by an assessed and they have no application whatever to involuntary acts resulting in transfer, assignment, limitation or extinguishment of rights in property by the force of law or under decree or order of the Court.

(14) This leads me to the consideration of the two objections raised on behalf of the Commissioner of Income Tax and the Inspector General of Registration. One is that the decree was passed on a compromise and so constituted a contract. This argument is not tenable as for purposes of execution, the fact whether the decree is based on a compromise or otherwise is of no validity, as well decrees properly passed are to be executed in the same manner and at present it is the

Court which is executing the decree and in its execution, the Registrar of the Court has been appointed to execute and register the sale-deed and it is not, Therefore, possible in law to go beyond the decree and find out how and why it was passed. The mere fact that the parties may collude or abuse the process of Court to circumvent the provisions of law, is no ground for giving a different construction to the provision under consideration.

(15) The second submission is that the previous application had been withdrawn and so the present application is barred. It is no doubt true the in I.A. No. 507 of 1970, P. S. Safeer J. had made observations on 8th May, 1970 which were unfavorable to the petitioner, but his lordship expressly deferred the decision and left the question open for further arguments. Had the matter been concluded, I would have felt bound by the same but since no decision was taken, I do not find that there is any judgment of the Court which prevents me from taking the view I have taken. Again the withdrawal of previous application on 18th August, 1970, is a matter of no consequence whatsoever. Order 23, Rule 1 of the CPC is not applicable to the execution of the decree, since by virtue of section 141 of the Code of Civil Procedure, the provisions relating to suits do not apply to executions. The objections, Therefore, fail.

(16) As a result, I order that the Inspector General of Registration and Sub-Registrar of Registration shall register the sale deed in question dated 3rd January, 1970 executed by the Registrar of this Court which has been presented on 2nd May, 1970 without calling for any tax clearance certificate. The parties will bear their respective costs of these proceedings.