
(1952) 06 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 497 of 1951

Firm Ralla Ram Raj Kumar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-06-1952

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 49(1), 100, 9
Evidence Act, 1872 — Section 157
Income Tax Act, 1961 — Section 46(2)
Punjab Land Revenue Act, 1887 — Section 158(2), 67, 70

Citation : AIR 1952 P&H 340

Hon'ble Judges : Savinder Singh Sodhi, J

Bench : Single Bench

Advocate : F.C. Mittal, for the Appellant; S.M. Sikri, General and Hem Raj Mahajan, for the Respondent

Judgement

Soni, J.—In March 1948, an income tax Officer issued a certificate u/s 46(2) of the Indian Income Tax Act in which it was stated that a firm called Messrs. Rur Chand Kishori Lal were in arrears of income tax to the extent of Rs. 1,75,000/- odd on account of Income Tax, super tax, etc. This certificate was forwarded to the Collector, Jullundur, with a request that the amount stated therein be realised as arrears of land revenue. With that certificate, a letter was also sent to the Collector in which it was said that Rur Chand, a partner of the assessee firm, was running business under the name and style of Ralla Ram-Raj Kumar and a request was made that the movable and immovable properties owned by Rur Chand in his personal name and/ or in the name of Ralla Ram-Raj Kumar be also attached.

On receipt of the certificate and the letter the Collector asked the Tehsildar to do the needful. The Tehsildar attached certain currency notes, cash, goods in trade, weighing-machines, Savings Certificates, etc., of the firm Ralla Ram-Raj Kumar. Ralla Ram-Raj Kumar protested and said that the properties attached" were the properties belonging to the firm and were not properties belonging to Rur Chand.

The objections of the firm were rejected by the Tehsildar on the 14th of August 1948. Therefrom the firm put an appeal before the Collector. Before the appeal was decided, the firm brought a suit against the Indian Dominion and against Rur Chand-Kishori Lal. During the pendency of the case, Rur Chand was declared insolvent and the Official Receiver was made a party. The Collector dismissed the appeal.

In the suit, the Subordinate Judge held that the properties attached belonged to the plaintiff firm and that they did not belong to Rur Chand who was not a partner of the plaintiff firm. On account of this finding the Subordinate Judge decreed the plaintiff's claim. This was on the 22nd of July 1950, the suit having been instituted on the 6th of November 1948. From the order of the Subordinate Judge, the Union of India appealed to the District Judge. The District Judge by his order dated the 7th of May 1951, accepted Government's appeal in part. He held that Rur Chand was a partner in the plaintiff firm and that his interest was half in the firm. The plaintiff firm Ralla Ram-Raj Kumar thereupon brought a second appeal in this Court.

2. The first point that was argued before me was that the civil Courts had no jurisdiction to entertain the suit. This point had not been urged before the Subordinate Judge and therefore he gave no finding on it. When the matter came up in appeal, it was urged on behalf of the Government that civil Courts had no jurisdiction. The District Judge repelled this contention. He held that if a person comes to a civil Court on the allegation that the property which is being attached and is going to be put up for auction on account of arrears of land revenue is his and not the defaulter's the civil Court has jurisdiction to decide as to whom the property belongs. The learned Advocate-General has contended that this decision of the District Judge is wrong. He has relied upon Sub-clauses (xiv) and (xv) of Clause (2) of Section 158 of the Land Revenue Act.

It is enacted therein that a Civil Court shall not exercise jurisdiction over any claim connected with, or arising out of, the collection by the Government, or the enforcement by the Government of any process for the recovery of land-revenue or any sum recoverable as an arrear of land-revenue; or any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land-revenue or any sum recoverable as an arrear of land-revenue. Mr. Sikri's contention is that under the provisions of Section 46 of the Income Tax Act the Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue.

3. Mr. Mital on behalf of the appellant does not dispute that the provisions of Section 46(2) of the Income Tax Act and Section 158(2) (xiv) and (xv) of the Land Revenue Act so provide. His contention, however, is that civil Courts have no jurisdiction in such matters if the Collector realises the arrears of land revenue from the property belonging to the defaulter, himself, but if there is any

dispute as to whether it does or does not belong to the defaulter his jurisdiction is a limited one and does not oust the jurisdiction of the Civil Courts.

Mr. Mital draws my attention to Section 46 (5A) of the Income Tax Act in which it is stated that the Income Tax Officer may at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income Tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice so much of the money as is sufficient to pay the amount due by the tax-payer in respect of arrears of Income Tax and penalty or the whole of the money when it is equal to or less than that amount, but where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee, or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such amount or part thereof, as the case may be, to the Income Tax Officer.

Mr. Mital's contention in relying on Clause (5A) of Section 46 is that if the Income Tax Officer himself had sent notice to the firm and had asked them to pay money as belonging to Rur Chand and if the firm had said that nothing was due to Rur Chand, then the Income Tax Officer could not ask the firm to pay that amount to him. If, therefore, the Income Tax Officer could not ask the firm to pay the amount to him, the Collector, who stands in the shoes of the Income Tax Officer, could not so demand.

4. Mr. Mital also places reliance on Section 67, Clause (c), of the Land Revenue Act. It is stated in that clause that an arrear of land-revenue may be recovered by distress and sale of the movable property and uncut or ungathered crops of the defaulter. In Section 70 of the Act it is stated that such movable property and uncut or ungathered crops of the defaulter may be distrained and sold by order of the Revenue Officer. In Clause (2) of Section 70 it is stated that the distress and sale shall be conducted, as nearly as may be, in accordance with the law for the time being in force for the attachment and sale of movable property under the decree of a Revenue Court constituted under the Punjab Tenancy Act, 1887.

Mr. Mital next refers to Section 88 of the Punjab Tenancy Act in which it is stated that the local Government may make rules consistent with this Act for regulating the procedure of Revenue Courts in matters under this Act for which the procedure is not prescribed thereby and may by any such rule direct that any provisions of the CPC shall apply, with or without modification, to all or any classes of cases before those Courts. It is also provided therein that until rules are made under Sub-section (1) and subject to those rules when made and to the provisions of this Act the CPC shall, so far as it is applicable, apply to all proceedings in Revenue Courts whether before or after decree. As no rules have been made by the local Government, the CPC applies.

Mr. Mital next refers to Order XXI, rules 58 and 63 of the Civil Procedure Code. In Order XXI. rule 58 it is stated that where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection, etc. etc. In rule 63 it is provided that where a claim or an objection is preferred, the party against whom an order is made may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Mr. Mital's argument is that the Collector's proceedings are regulated by the provisions of rules 58 and 63 of Order XXI of the Civil Procedure Code. Objections were preferred before the Tehsildar. The objections failed and thereupon a right is granted to the objector to bring a suit to contest the liability of the property for attachment and sale. My attention was drawn by the Advocate-General to a ruling of Dobson, F.C., "Natha Singh v. Abdullah 1931 Lah LT 48, in which the Financial Commissioner had held that Order XXI, rule 63, was applicable to proceedings in execution of decrees of Revenue Courts; The Advocate-General's comment on the ruling was that it did not lay down good law.

5. Mr. Mital has referred to various authorities and so has the Advocate-General. The first thing that I would like to say in this case is that it is well settled, as observed by their Lordships of the Privy Council in "Secy. Of State v. Mask And Co. ILR (1940) Mad 599 that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

Mr. Sikri referred to an old case decided by their Lordships of the Privy Council known as "Richard Spooner v. Juddow, 4 Moo Ind App 353, in which the Collector had sent his officer to collect quit-rent which was regarded as an arrear of land revenue. The officer was impeded in execution of the process and a suit was brought against the Collector for damages on account of trespass. It was held in that case that no suit lay as the High Court of Bombay had no jurisdiction to entertain any suits relating to revenue. Mr. Mital, however, pointed out that in this case the person whose property was being proceeded against by the Collector's officer and who had brought the suit for trespass was the very person who was recorded in the Collector's registers as the person owning the property and that though he had transferred the property to the person from whom the quit-rent was due that person had not been entered in the Collector's registers as owner of the property. "Prima facie", therefore, the Collector was right in directing his officer to seize the property or its contents in order to realise the sum of Rs. 8/3/8 on account of arrears of quit-rent.

Mr. Mital's contention is that the Collector's jurisdiction is absolute and is

guaranteed to him u/s 158 of the Land Revenue Act in cases where ex facie the person whose property he is distressing or attempting to sell is the owner of the property, but in cases where on the face of it another person's property is being proceeded against the Collector has no such absolute jurisdiction given to him under the law. Mr. Mital in this connection referred to a number of cases out of which I shall only cite two. The first case is that decided by their Lordships of the Privy Council, "Mohamed Abdool Hai v Gujraj Sahai 20 Cal 828 (PC), in which at p. 831 their Lordships say as follows:

"If they (the steps of procedure) were directed against the respondent, and were meant to attach his interest, these proceedings were unwarranted by the provisions of Act VII (7) of 1880, which only authorize the attachment and sale of property of the persons who, on the face of them, are described as the judgment-debtors. The Act gives no authority to attach and sell the estate of any other person in satisfaction of the arrears due by the judgment-debtors."

Another ruling relied upon by Mr. Mital and also by the District Judge was the case of "Gangaram v. Dinkar Ganesh 37 Bom 542 in which case after consideration of the sections of the Revenue Jurisdiction Act, Bombay, it was held that Section 4 (c) of the Revenue Jurisdiction Act of Bombay was not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue. Mr. Sikri when dealing with this case said that the suit was saved by the express provisions of Section 5 of the Revenue Jurisdiction Act prevalent in Bombay. That section said:

"5. Nothing in Section 4 shall be held to prevent the Civil Courts from entertaining the following suits:

(a) Suits against Government to contest the amount claimed, or paid under protest, or recovered, as land revenue, on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that, such amount had, previous to such claim, payment or recovery, been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount; * * * * "

Mr. Sikri said that it was because of Section 6 that Sir Basil Scott, Chief Justice, had held that the suit was saved but at p. 550 Sir Basil Scott had said:

"We think that the proceedings mentioned in, section 4 (c) must be in their inception legal."

This is practically the same thing as what was said by their Lordships of the Privy Council in the case already referred to. If ex facie the property which is being proceeded against belongs to the defaulter then the proceedings of the Collector could not be challenged, but where in the very beginning or inception or ex facie it is somebody else's property which is being proceeded against, then there is no principle of law which would bar the jurisdiction of the Courts. Section 5 of the Bombay Revenue Jurisdiction Act merely enunciates general principles of law

which are always applicable. This is exemplified by Section 77 of the Land Revenue Act which provides that if the arrear cannot be recovered by any of the processes before mentioned, or if the Financial Commissioner considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding, or any other immovable property, proceed under the provisions of this Act against that property as if it were the land in respect of which the arrear is due.

This is followed by a proviso in which it is stated that no interests save those of the defaulter alone shall be so proceeded against. It is clear that the sections of the Land Revenue Act which enable the Collector to attach property are provisions in which there is no doubt ex facie that the property belongs to the defaulter. In cases, where it is not so evident, the Collector by summary proceedings cannot decide questions of title which ordinarily are decided by civil Courts.

Under Section 9 of the CPC ordinary courts of general jurisdiction have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. There is no doubt that the Land Revenue Act would expressly and impliedly bar matters concerning the collection of land revenue where the property from which the land revenue is to be had ex facie belongs to the defaulter, but there is no express or implied bar of such a nature regarding property which ex facie belongs to somebody else.

6. Mr. Mital has a further objection regarding the Collector's proceedings being legal. In this connection Mr. Mital refers to Rule 49 of Order XXI, Civil Procedure Code. It is there stated:

"49 (1). Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against (he partners in the firm as such. * * *
* " Mr. Mital's argument is that arrears of land revenue were arrears due from the firm Rur Chand-Kishori Lal but were not arrears due from the plaintiff firm nor from Rur Chand as a partner in the plaintiff firm, and under, the provisions of Order XXI, rule 49, the property of the plaintiff firm could not have been attached or sold to realise the arrears of Income Tax due from Rur Chand even if he was a partner in the plaintiff firm. Rule 49 appears to support Mr. Mital.

7. In my opinion the arguments advanced by Mr. Mital on the preliminary point are sound. I would therefore, concurring with the view taken by the learned District Judge, hold that a civil Court has jurisdiction to entertain the suit.

8. Some facts of the case must now be stated. A man called Ralla Ram had three sons, Rur Chand, Daulat Ram and Biru Ram. They all separated. Biru Ram went to Africa and carried on business there. He sold his property to one of his brothers. The two brothers Rur Chand and Daulat Ram had a contractual partnership which was registered in 1934. A certificate of registration has been produced on the record and is Exh. P. 11. This firm was dissolved in 1944. After

the dissolution of this firm, Daulat Ram adopted Raj Kumar who was Rur Chand's son and founded a firm which was called by the name of Ralla Ram Raj Kumar, which was not a contractual firm but was a joint Hindu family firm consisting of Daulat Ram and his adopted son Raj Kumar. This was never registered.

Rur Chand, the other brother, founded another firm and took with him a stranger to the family, a person called Kishori Lal. The name of the firm was Rur Chand-Kishori Lal. This was also started in 1944. It was the firm Rur Chand-Kishori Lal which was assessed to income-tax and was in default of Rs. 1,75,000/- odd as already stated. The trial Court came to the conclusion after going through the evidence that Rur Chand had nothing to do with the firm Ralla Ram-Raj Kumar from whom the Income Tax authorities asked the Collector to get their arrears of Income Tax. The trial Court referred to the evidence of two Income Tax Officers. Mr. Bansilal and Mr. Shukla, (Mr. Bansilal was examined as D. W. 2 and Mr. Shukla on commission) and came to the conclusion that their evidence was of no use to Government as their evidence was only hearsay evidence.

I have read the evidence of these two witnesses and have satisfied myself that their evidence is not first hand evidence but is, as the trial Judge says, hearsay evidence. Mr. Bansilal said that he derived his information from Asa Ram. This Asa Ram has not been produced as a witness. Mr. Shukla also based his conclusions mainly on Asa Ram's evidence. He also made reference to certain books of account which were not produced in evidence. Therefore, in my opinion, so far as these two witnesses were concerned their evidence could not be taken into consideration. Reference was made to Exh. D. 3 on which Govt. placed its reliance. Exh. D. 3 is a copy of a plaint dated the 12th of December, 1945, in a suit brought by Rur Chand in the name of Ralla Ram-Raj Kumar against Seth Ram Narain etc. in which he claimed a certain sum of money as due to him. This plaint naturally would not prove itself and in order to prove this plaint Rur Chand was called into the witness-box and he explained that this sum of money was due to him individually and not due to the firm Ralla Ram-Raj Kumar and that as it was necessary to bring the name of a firm in order to bring this suit he put in the name of Ralla Ram-Raj Kumar. This explanation may or may not be true. If true, it completely demolishes the theory of Rur Chand being the owner of the firm Ralla Ram-Raj Kumar. If false, it merely proves that Rur Chand made a false statement, but it does not prove that the contents of the plaint are true.

The learned District Judge has fallen into the error of considering that if Rur Chand be regarded as not a truthful witness the facts alleged in the plaint are proved. This is not so. The plaint can at the best be described as a previous statement of a witness with which the witness when coming and giving his evidence in Court can be contradicted or corroborated, but the previous statement itself does not prove the truth of the previous statement which must be proved aliunde. In my opinion, the learned District Judge in coming to his finding that Rur Chand was a partner in the firm Ralla Ram-Raj Kumar was in error in relying on Exh. D. 3, the plaint of 1945. The District Judge relied on

some entries in some "bahi khata", which showed that Daulat Ram had contributed a sum of Rs. 10,000/- to the capital of the firm Ralla Ram-Raj Kumar which he brought into existence in 1944, and that another man called Mank Chand had contributed Rs. 11,000/-.

If this entry be true, it would only prove that the man called Manak Chand was a partner in the firm Ralla Ram-Raj Kumar, but it would not prove that Rur Chand was a member of the firm. The learned District Judge said that he did not believe Daulat Ram when he said that the firm belonged to him, as Raj Kumar had a share in it, but in making this observation the District Judge forgets that Raj Kumar is Daulat Ram's adopted son and that the firm is a joint Hindu family firm in which this son being the son of his father has a share by virtue of the Hindu law.

In my opinion, therefore, the learned District Judge wholly misdirected himself in coming to the conclusion that it is proved that Rur Chand was a partner in the plaintiff firm which consisted of Daulat Ram and Rur Chand in which Rur Chand had an equal share. In my opinion, the learned District Judge's finding is vitiated by substantial errors and defects of procedure in appreciating the law of evidence and in allowing himself to be influenced by irrelevant facts. Such a finding is not binding on this Court in second appeal.

9. I would therefore hold that there was no material on which the decree of the trial Judge could have been upset. I therefore set aside the order and decree of the District Judge and restore that of the trial Judge. The plaintiff will have his costs throughout. Counsel's fee Rs. 200/- in this Court.

10. In my opinion this is a fit case for the grant of a certificate for appeal under the Letters Patent, and I grant this certificate.