

(1997) 10 MAD CK 0053

In the Madras High Court

Case No : TCRP No's. 108 to 110 of 1990, 227, 352 and 355 of 1991 and 128 to 130 of 1992

G. Subburaj and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 23-10-1997

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 17, 29

Citation : (1999) 237 ITR 350

Hon'ble Judges : N.V. Balasubramanian, J;Janarthanam, J

Bench : Division Bench

Advocate : C.V. Rajan, Ravindran for Subbaraya Aiyar and Padmanabhan, for the Appellant; K. Elango, for the Respondent

Judgement

Janarthanam, J.—Desirable it is, to pen down a common order in all these actions, inasmuch as the point involved for consideration is one

and the same.

One G. Subburaj and one Sasikala, it is said, are spouses. Their son is one minor Tamil Selvan. The said G. Subburaj, it appears owns individual

property in his name comprising an extent of 12.89 plus 1.13 acres, totalling to 14.02 acres. This apart he appears to have purchased an extent of

62.50 acres in his name in Court auction proceedings. Thus, in all, he acquired by way of purchase in Court auction or otherwise to a total extent

of 76.52 acres. On 5th October, 1979 a registered document styled as family arrangement came into existence in and by which allotment of landed

properties was made among the spouses and their son. 21 acres were allotted to each of the spouses apart from allotting 21.68 acres to their

minor son.

2. The Agrl. ITO, Dindigul, it appears, recognising the said document, styled as family arrangement as a partition deed, was stated to have

assessed the spouses and their son individually on and from the asst. yr. 1980-81.

3. The assessment so made till upto the asst. yr. 1987-88, it appears, did not attract the attention of the Commr. of Agrl. IT, Chepauk, Madras

600 005 enabling him to take suo motu revision proceedings under s. 34 of the TN Agrl. IT Act, 1955 (for short "the Act") upto 2nd June, 1988

on which date he issued notice under s. 34 of the said Act to all of them requiring them to show cause as to why the income of the wife Sasikala

and son Tamil Selvan from their holdings of land said to have been allotted to them under the family arrangement should not be treated as the

income of Mr. G "Subbaraj, for the years 1985-86, 1986-87 and 1987-88, as though it was a transfer under s. 9 of the Act. It appears all of them

filed objections. Overruling their objections, the said Commr. computed the income of G. Subbaraj for the aforesaid three assessment years,

including the income from agricultural holdings of his wife, Sasikala and son, Tamil Selvan as though there was transfer of agricultural holdings in

favour of his wife, Sasikala and son Tamil Selvan.

4. Aggrieved with the orders so passed, G. Subbaraj, resorted to file TC Revision Nos. 108 to 110 of 1990, relatable to the asst. yrs. 1985-86 to

1987-88.

5. Likewise, his wife Sasikala resorted to file TC Revision Nos. 227, 352 and 355 of 1991 relatable to the asst. yrs. 1985-86 to 1987-88.

6. Their son, minor Tamil Selvan is not an exception. He also resorted to file TC Revision Nos. 128 to 130 of 1992, relatable to the asst. yrs.

1985-86 to 1987-88.

7. Arguments of Mr. Ravindran, learned counsel representing Mr. Subbaraya Iyer, learned counsel appearing for the petitioners and Mr. K.

Elango, Government Advocate, representing the Revenue and also Mr. C. V. Rajan, learned junior standing counsel for Income Tax, who was

requested by us to render assistance as amicus curiae, were heard.

8. We are rather pained to reflect our agony and anguish as respects the way in which the authorities below, viz. the Agrl. ITO, Dindigul and the

Commr. of Agrl. IT, Chepauk, Madras, passed the orders without any semblance

of application of mind relatable to the application of relevant provisions of law to the facts of the case on hand in giving a proper legal fitment. Salient provisions had been adumbrated under s. 29 of the Act for assessment of the members of HUF after partition. For the said section to apply, there must be an assessment under s. 17 of the Act and that assessment should be made on an HUF. At no point of time, there was an assessment having been made treating them as members of HUF. This apart, the authorities below did not at all appear to have indulged in an enquiry so as to ascertain the nature and character of the properties, which fell for allotment under the so-called family arrangement. As we have stated earlier, all the properties stood in the name of G. Subbaraj on the date when the family arrangement came into existence. We also perused the records produced before us by learned counsel for the Revenue for our perusal and consideration and to our shock, the perusal of the records reveals that in all the revenue records the name of G. Subbaraj figures as the owner of the lands. Unless all the properties that fell for allotment in the family arrangement are impressed with the character of joint family properties, the so called family arrangement allotting properties individually to the members of the family, cannot at all be stated to declare their pre-existing right in the said properties, so that by the said family arrangement there was no transfer of an interest in their favour.

9. It is agonizing for us to note that the AO without even verifying as to whether there was an original assessment under s. 17 of the Act, treating them as members of the HUF, sought to assess them straightway treating their holdings in their hands as separated members of the joint family in the asst. yr. 1980-81 immediately after the family arrangement came into existence. Puzzling it is for the Commr. of Agrl. IT in not accepting the partition on the rationale or reasoning of unequal divisions of properties among the members, who took part in the family arrangement. That is not a question germane enough for the Commr. of Agrl. IT to delve in his orders. The germane question which ought to have fallen into consideration at the hands of the Commr. of Agrl. IT, may be the one relatable to the nature and character of the property that fell for allotment among the members of the family in the family arrangement. That sort of a line of enquiry has not at all been made by him. Without recording a finding on that

aspect, it is not possible or plausible for us to dispose all these matters.

10. In this view of the matter, we are rather impelled to set aside the orders of the Commr. of Agrl. IT, Chepauk, Madras 600 005 setting aside

the orders of the Agrl. ITO, Dindigul in respect of the assessment years, viz., 1985-86, 1986-87 and 1987-88 pertaining to all the assessees,

viz., G. Subburaj, Sasikala and minor, Tamil Selvan and remand the matters to the Commr. of Agrl. IT, Chepauk, Madras - 600 005 for fresh

disposal according to law in the light of the observations we have made as above.

11. We are greatly indebted to Mr. C. V. Rajan, learned junior standing counsel (Income Tax) for the able assistance rendered by him.

12. All the Tax Case Revisions are thus disposed of. No costs.