

(1968) 10 MAD CK 0057

In the Madras High Court

Case No : Writ Petition No's. 2956 ot 2961 of 1965

K.P.M. Abdul Majeed

APPELLANT

Vs

Assistant Agricultural Income Tax Officer

RESPONDENT

Date of Decision : 15-10-1968

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 10, 10(1), 9(2)

Citation : (1969) ILR (Mad) 613 : (1970) 78 ITR 124 : (1969) 82 LW 474

Hon'ble Judges : T. Ramaprasada Rao, J;K. Veeraswami, J

Bench : Division Bench

Advocate : K.R. Ramamani, for Subbaraya Aiyar, Sethuraman and Padmanaban, for the Appellant; Assistant Government Pleader, for the Respondent

Judgement

Veeraswami, J.—These are petitions under Article 226 of the Constitution for a direction forbidding the Assistant Agricultural Income Tax Officer, Nannilain, from proceeding against the common petitioner for assessment of the agricultural income. He and his brother, K.P.M. Abdul Khader, owned 309.66 acres of wet and dry lands in Nannilam Taluk. They divided the properties by metes and bounds under a deed of partition, dated 21st July, 1952, each getting a moiety of the estate. The petitioner, thereafter, by two deeds dated 23rd March, 1955, and 15th March, 1958, settled his entire share of lands on his wife and minor children. Though the settlees individually applied for composition under the provisions of the Madras Agricultural Income Tax Act, the Agricultural Income Tax Officer clubbed all the lands, including the share allotted to K. P. M. Abdul Khader and charged the total income from the entire lands to agricultural Income Tax. This order was eventually set aside by this court in T.C. No. 52 of 1963, on the view that the assessment made on the basis of an association of persons was illegal. The Agricultural Income Tax Officer then served on the petitioner a notice dated 13th January, 1965, to show cause why he should not be assessed to tax in respect of the income from the lands settled by him on his wife and minor children. The officer in justification relied on Section 9(2) and expressed his intention to proceed under that provision. All this was for the year 1959-60.

Ignoring the petitioner's objection that in view of the settlement made in favour of his wife and minor children, he did not own any land to attract the provisions of the Act, the Agricultural Income Tax Officer served further notices on him asking for his income from the entire lands u/s 9(2). The petitioner has, therefore, applied to this court for a direction as we mentioned at the outset.

2. We think that the petitions are well-founded. It does look strange at first sight that if a holder of lands settles part of them on his wife and/or minor children by way of gift and the lands retained by him exceed the limit for exemption u/s 10(1), the income from the lands so settled was liable to be included in the income of the settlor; but if he transferred by way of a gift to his wife and/or minor children his entire-lands, the provisions of the Act would be inapplicable to him. But on a careful consideration of Sections 10(1), 9(2) and the definition of "to hold", we are clearly of opinion that that will be the result. Section 10(1) is specific in its terms that nothing contained in the Act shall apply to a person who holds land not exceeding twelve and a half standard acres before the amendment in 1968. There is a proviso to the sub-section which we need not recite for present purposes. The expression "to hold" is defined to mean, to possess and enjoy either as owner or tenant or mortgagee in possession or as a maintenance holder or in one or more of these capacities. When a person denudes himself of the entire land owned by him, by making a gift thereof to his wife and/or minor children, by the terms of Section 10(1) and the definition of the expression "to hold", the provisions of the Act would be inapplicable to him. There is nothing in Section 9(2) to alter the position. That provision only requires the income which has been derived from the assets transferred by a person to his minor child to be included in his income. It does not deal with the ownership or possession of the lands, and contains no deeming provisions that in a case like this, by a fiction and notwithstanding the settlement, the transferor should be deemed to own the lands forming the subject-matter of transfer without consideration. The result is that the petitioner in these petitions, holding as he does no lands, or land not in excess of twelve and a half standard acres before the 1968 amendment, is not affected by any of the provisions of the Madras Agricultural Income Tax Act. It follows that the direction proceeding from the respondent is clearly invalid.

3. The petitions are allowed with costs, one set. Counsel's fee Rs. 200.

Petitions allowed.