(1960) 02 KL CK 0056

In the High Court Of Kerala

Case No : O.P. No. 358 of 1957 and W.P. No''s. 1280 and 1281 of 1956 (M)

KUNJIKANNAN NAIR AND OTHERS — APPELLANT

Vs

TAHSILDAR, CANNANORE, AND OTHERS. — RESPONDENT

Date of Decision : 19-02-1960

Acts Referred:

Citation : (1961) 43 ITR 429 : (1960) 4 KLJ 486

Hon'ble Judges : Velu Piliai, J

Bench : Division Bench

Judgement

VELU PILIAI J. - In the circumstances stated in C.M.P. Nos. 2369 of 1957 and 2367 of 1957, Writ Petitions Nos. 1280 and 1281 of 1956(M) are hereby restored, and they are being disposed of along with Original Petition No. 358 of 1957, by this judgment.

One Sankaran Nair was assessed to Income Tax on "escaped income" for the year 1947-1948, u/s 34 of the India Income Tax Act, 1922 (hereafter referred to as the Act), on April 24, 1953. By two deeds dated October 26 and October 27, 1952, he had conveyed some of his properties to some of the petitioners in these proceedings and the predecessors of some of them and others. For the realisation of Income Tax under the assessment referred to above, the Income Tax Officer, who is the third respondent in O.P. No. 358 of 1957, issued a certificate u/s 46(2) of the Act to the Collector, Cannoneer, the second respondent therein, who thereupon placed an attachment over the properties conveyed by the deeds mentioned above, under the provisions of the Madras Revenue Recovery Act, through the Tahsildar, the first respondent in O.P. No. 358 of 1957. Writ Petitions Nos. 1280 and 1281 of 1956(M) were filed in the Madras High Court to quash the proceedings under the Madras Revenue Recovery Act, and were transferred to this court upon the formation of the Kerala State. As they happened to be dismissed for default of appearance of counsel, O.P. No. 358 of 1957 was filed by way of abundant caution for the same relief.

The point taken in these petitions is, that the properties attached did not belong to the assessee and could not, therefore, be proceeded against for the realisation of Income Tax due from him. There is no provision in the Madras Revenue Recovery Act which enables the Collector to attach and sell land, not registered in the defaulters name, for arrears of revenue due from him. This has also been ruled by a Division Bench of the Madras High Court in Dhanalakshmi Ammal v. Income Tax Officer. It was stated before me, that the properties attached are Jenmom lands and stand registered in the name of the Jenmi and not of Sankaran Nair. The learned counsel for the respondents maintained that the stand taken by the department was, that the deeds of transfer made by Sankaran Nair were sham documents, and that notwithstanding such deeds, the transfers obtained no interest whatever in the properties, but that they continued to belong to the assessee, who was the defaulter. The proviso to section 46(2) of the Act, which reads :

"Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil Procedure, 1908, a civil court has for the purpose of the recovery of an amount due under a decree," was relied on by the learned counsel, as conferring power on the Collector to attach properties which ostensibly stand in the names of persons other than the defaulter, on the assertion that they really belong to the defaulter. The proviso has conferred the powers of a civil court for the purpose of recovery of the amount due under a decree upon the Collector for the realisation of Income Tax, while acting in pursuance of the certificate issued u/s 46(2) of the Act. There is no provision in the Madras Revenue Recovery Act, prescribing a special procedure for the exercise of such power by the Collector, the only procedure being u/s 27 of the Madras Revenue Recovery Act, which relates to the mode of attachment. It was not the case of the petitioners, that this procedure had not been complied with, in effecting the attachment. The procedure being thus assimilated to that under the Civil Procedure Code, it must be open to the party who claims to be interested in the properties attached, to lay his claim to them and object to the attachment before the Collector as under Order XXI, rule 58, the corresponding provision of the Civil Procedure Code. It then becomes the duty of the Collector to decide the dispute as between the claimant and the department, and there will also be a right of suit to the party aggrieved by his decision. This is also what has been held by the Madras High Court in Dhanalakshmi Ammals case.

The learned counsel for the respondents has stated at the hearing of these petitions, as in the Madras case, that the attachment may be treated as one under the provisions of the Civil Procedure Code, that the petitioners are entitled to prefer a claim before the Collector as under Order XXI, rule 58, Civil Procedure Code, and that a right of suit also is available to the aggrieved party against the ultimate decision of the Collector. It is now seen, that Sankaran Nair died in July, 1959, and so, in any case, the department has to bind those person, who, according to it, are now entitled to the properties or to represent his estate by appropriate proceedings. The petitioners are free to make their claims to the properties attached before the Collector, who has to investigate the same and come to a decision. With the above observations, these petitions are dismissed, but without costs.

Petitions dismissed.

