(1984) 06 KL CK 0009

In the High Court Of Kerala

Case No : O.P. No. 2905 of 1983

L. T. IBRAHIM — APPELLANT

Vs

AGRICULTURAL INCOME TAX OFFICER. — RESPONDENT

Date of Decision : 07-06-1984

Acts Referred:

Kerala Agricultural Income Tax Act, 1950 — Section 54, 54(1)

Citation : (1985) 44 CTR 60

Hon'ble Judges : K. S. Paripoornan, J

Bench : Division Bench

Judgement

K. S. Paripoornan, J. - The petitioner in the o.p. is plaintiff 2 in O.S. No. 26 of 1982 before the Munsiffs Court, Kasargode. The suit was one for partition of the plaint schedule properties. He alleged that the income of the properties were appropriated by his brother, respondent 3 in this O.P. who is the 1st defendant is the suit. To prove his averments in the plaint the petitioner filed an application before respondent 1 - the Agrl. ITO, Hosdurg -praying for the issue of a certified copy of the return filed by respondent 3 quoting reference number M. 55 (Ext. P1). Respondent 1 by Ext. P2 order dt. 23-2-1983 rejected the application. He relied on s. 54 (3) r/w s. 54(1) of the Agrl. IT Act and said that the application, for a certified copy of the return filed by respondent 3 by a stranger is not sustainble and so the petitioner is not entitled to the certified copy applied for by him. The petitioner filed another application seeking the very same relief by Ext. P3 dt. 18-3-1983 Ext. P4 is the affidavit filed in support of the application. By Exts. P5 order dt. 21-3-1983 respondent rejected the application. In this original petition Ext. P2 and P5 proceedings of respondent 1 are impugned.

2. Petitioners counsel contended that there is no absolute prohibition against disclosure of information under s. 54 of the Agrl. IT Act. It is argued that the Ist respondent misconstrued s. 54 of the Act, in passing Exts. P2 and P5 orders. The petitioner says that he is the co-owner of the properties along with the 3rd respondent and so, there is nothing which interdicts the 1st respondent from

supplying the certified copies of the returns filed by his brother, 3rd respondent for the year 1969 to 1981.

3. On behalf of the 1st respondent a detailed counter-affidavit dt. 27-2-1984 has been filed. Government Pleader, Mr. Divakaran Pillai, who a appeared on behalf of respondents Nos. 1 & 2, supported the stand taken in the counteraffidavit of respondent 1. Counsel for the revenue further contended that s. 54 of the Agrl. IT Act has been properly construed by respondent 1 and that Exts. P2 and P5 are not open to any infirmity as alleged by the petitioner. The revenue contends that the mere fact that the petitioner is a co-owner along with his brother, respondent 3 will not in any way affect the plain and clear language of s. 54 of the Act which interdicts respondent 1 from supplying the copies of the returns filed by the respondent 3 to the petitioner sec. 54(1) of the Agrl. IT Act is to the following effect :

"54. Disclosure of information by public servant. - (1) All particulars contained in any statement made, return furnished or accounts or documents produced under the provisions of this Act or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act other than proceedings under this Chapter or in any record of an assessment proceeding or any proceeings relating to the recovery of a demand prepared for the purpose of this Act shall be treated as confidential and notwithstanding anything contained in the Travancore Cochin Evidence Act no court shall save as provided in this Act be entitled to require any public servant to produce before it any such return accounts, documents or record for any part of such record to give evidence before it in respect thereof."

Under s. 54 (3) of the Act there are certain cases in which the particulars of certain documents can be disclosed. Such categories of documents are taken outside the purview of s. 54(1) of the Act. It is common ground that the petitioners application for a certified copy of the return filed by respondent 3 will not come within the excepted categories of cases specified in s. 54(3) of the Act. Looking into the language of s. 54(1) should say that all documents referred to in the section shall be treated as confidential and that no court shall be entitled to require any public servant to produce before it any such return, accounts documents etc. The prohibition is absolute in its terms and it makes no exception. A similar provision which occurred in the IT Act came up for consideration in Charu Chandra Kundu Vs. Gurupada Ghosh, and Commissioner of Income Tax, Bombay Vs. Laxmichand Narayandas and Another, In the former case, the Supreme Court held that the prohibition imposed against the court by s. 54 is absolute and its operation is not obliterated by any waiver by the assessee in whose assessment the evidence has been tendered, document produced or record prepared. The matter came before this court in an Agrl. IT matter in the decision reported in Sankaranarayana Bhatta v. Ganapathi Bhatta 1978 CTR (Ker) 9 my brother G. Balagangadharan Nair J., held that :

"As to the effect of the sub-section, it is in two parts -the first part enacts that the records and particulars specified in them shall be treated as confidential and the second part, save as provided in the Act. debars the Court from requiring any public servant to produce the records or any part of them in court. Therefore, besides directing the records to be treated as confidential the sub-section imposes a ban upon the public servant against producing them or any part of them in court."

4. On a fair and reasonable reading of s. 54 (1) of the Agrl. IT Act, in the light of the decisions reported in Charu Chandra Kumdus case (supra), CIT v. Laxmichand (supra), and Sankaranarayana Bhattas case (supra) I hold that respondent 1 was justified in passing Exts. P2 and P5 orders. The petitioner is not entitled to get the certified copy of the returns filed by his brother 3rd respondent for the years 1969 to 1981.

5. The original petition is without merit. It is dismissed. There shall be no order as to costs.

