(1972) 11 MAD CK 0038

In the Madras High Court

Case No : Writ Petition No. 727 of 1969

Mahboob Bi APPELLANT

Vs

Tax Recovery Officer and Another RESPONDENT

Date of Decision : 14-11-1972

Acts Referred:
Income Tax Act, 1961 — Rule 85

Citation : (1974) 93 ITR 127

Hon'ble Judges : V. Ramaswami, J;G. Ramanujam, J

Bench : Division Bench

Advocate : S. Nainarsundaram and V. Natarajan, for the Appellant; V. Balasubrahmanyan and J. Jayaraman, for the Respondent

Judgement

Ramanujam, J.—The petitioner''s late husband, one T. M. Abdul Rahim, was in arrears of Income Tax, interest thereon and penalty aggregating to Rs. 4,37,868.29. For recovering the said amount, recovery proceedings were initiated by the Income Tax department. A certificate was issued by the Income Tax Officer to the Tax Recovery Officer u/s 222 of the Income Tax Act, 1961, on March 27, 1968, for the recovery of the said amount. In pursuance of the said certificate, the Tax Recovery Officer initiated recovery proceedings. He issued a notice of demand to the defaulter, the said T. M. Abdul Rahim, for the entire arrears under Rule 2 of the Second Schedule to the Income Tax Act, 1961, on May 10, 1968. But, as the defaulter had died even on April 17, 1968, the said notice of demand was returned with the endorsement that the assessee was dead. In spite of this return, the Tax Recovery Officer issued a notice of attachment dated December 26, 1968, in Form No. I.T.C.P. 16 addressed in the name of the deceased defaulter restraining him from alienating seven items of properties said to belong to him. On the same day, he directed the revenue inspector, Ranipet, in Form No. I.T.C.P. 12 to sell the properties in public auction after giving 30 days'' notice to the defaulter. He also addressed a notice in Form No. I.T.C.P. 17 on the same day notifying the defaulter that the sale proclamation will be settled on February 23, 1969. Curiously, on the same day, he has also settled the sale proclamation in Form No. I.T.C.P. 13 and sent a copy of the same to the defaulter. According to the petitioner all these notices were found affixed on the door of the house in which she was living. The petitioner complains that all the above notices are invalid in that they have been addressed to the defaulter who is dead even in April, 1968, that the properties of the defaulter which have been inherited by his legal representatives cannot be attached and sold unless notices of demand and of attachment are given to them as legal representatives of the deceased defaulter and that the attempt to bring the properties in question to sale in pursuance of the above invalid attachment and the proclamation of sale cannot be sustained in the circumstances of this case.

2. In answer it is stated in the counter-affidavit filed on behalf of the respondents that notices of demand were in fact issued to the petitioner and the other legal representatives of the deceased defaulter before the attachment was effected and the sale proclamation was settled. But, on a perusal of the records produced by the respondents, we find that the notices of demand were issued to the legal representatives in Form No. I.T.C.P. 29 only in February, 1969, long after the attachment was effected and the sale proclamation, had been settled in December, 1968.

3. The question is whether the notice of attachment and the proclamation of sale issued in the names of the deceased defaulter are invalid and, if so, whether subsequent service of the notices of demand on the legal representatives will cure the invalidity of the notices of attachment and the sale proclamation issued in the name of the deceased defaulter long earlier in December, 1968.

4. Admittedly, all the notices of attachment and the sale proclamation issued in December, 1968, were only in the name of the deceased defaulter and not in the names of his legal representatives. It is well established that if a revenue sale is held when a defaulter is dead without a notice of demand being served on any living person as defaulter, the sale is a nullity: Avudainayagam Pillai Vs. Pitchiah Chettiar alias Pitchiah Pillai and Others, . Even from the counter-affidavit it is seen that the Tax Recovery Officer was aware even in May, 1968, when the original notice of demand issued against the defaulter was returned with the endorsement that the defaulter was dead. The Tax Recovery Officer should have, therefore, followed the procedure laid down in Rule 85 of the Second Schedule by serving notices of demand against the legal representatives of the defaulter. That rule points out that if at any time after the issue of the certificate by the Income Tax Officer to the Tax Recovery Officer the defaulter dies, the proceedings under that Schedule (except arrest and detention) may be continued against the legal representatives of the defaulter, and the provisions of that Schedule should apply as if the legal representative was the defaulter. As already stated, all the notices issued on December 26, 1968, were addressed to the defaulter and there is no indication in those notices that the proceedings are being taken against the legal representatives. It is only in February, 1969, notices were addressed to and served on the legal representatives of the

deceased defaulter. It could, therefore, be said that the recovery proceedings had been properly initiated against the legal representatives of the deceased defaulter only after February, 1969. Therefore, the earlier attachment and the settling of the sale proclamation made on December 26, 1968, without notice to the legal representatives of the deceased defaulter cannot be held to be in accordance with the rules. Once the Tax Recovery Officer is put on notice of the death of the defaulter, the Tax Recovery Officer has to proceed under Rule 85 by initiating or continuing the recovery proceedings against the legal representatives of the defaulter under the Second Schedule for recovery of the amount due from the defaulter. As already stated, in this case, the attachment and the sale proclamation have taken place long after the death of the defaulter, but long before the proceedings under Rule 85 were initiated against the legal representatives of the deceased defaulter. We have, therefore, to hold that the notice of attachment and the sale proclamation issued on December 26, 1968, are not valid. The writ petition is, therefore, allowed on this short ground.

5. We, however, make it clear that it is open to the Tax Recovery Officer to continue the recovery proceeding by issuing afresh notices of attachment and proclamation of sale to the legal representatives, as the petitioner and the other legal representatives have already been served with notices of demand in February, 1969, as per Rule 85. We may also point out that in any recovery proceedings initiated or continued against the legal representatives of the deceased defaulter, the notices are to be addressed in the names of the legal representatives either individually or as the legal representatives of the deceased defaulter. There will be no order as to costs in this petition.

