

(1937) 12 MAD CK 0033
In the Madras High Court

Manickam Chettiar

APPELLANT

Vs

The Income Tax Officer and Another

RESPONDENT

Date of Decision : 16-12-1937

Acts Referred:

Income Tax Act, 1961 — Section 46

Citation : (1938) ILR (Mad) 744 : (1938) 47 LW 368 : (1938) 1 MLJ 351

Hon'ble Judges : Alfred Henry Lionel Leach, C.J.;Varadachariar, J.;Mockett, J

Bench : Full Bench

Judgement

Alfred Henry Lionel Leach, C.J.—The petitioner obtained a money decree against one Govinda Rao and in execution thereof attached

certain movable properties belonging to the judgment-debtor and brought them to sale. Govinda Rao under an order of assessment dated the 28th

August, 1934, was required to pay a sum of Rs. 301-13-0 by way of Income Tax. He did not comply with the notice of demand for payment and

on the 12th November, 1934, a penalty of Rs. 10 was imposed by the Income Tax Officer because of the default, thus increasing the total amount

due by the assessee to Rs. 311-13-0. Before the sale the Income Tax Officer filed an application in Court asking for an order directing the

payment out to him from the sale proceeds when the sale took place of the amount due to Government by Govinda Rao. The sale in execution was

in due course carried out, but only realised on Rs. 227-9-0. After reserving the amount required for the costs of execution the District Munsiff

ordered the balance to be paid out to the Income Tax Officer. The question which we are called upon to decide is whether the Court had power

to order the payment out of moneys due to Government on mere application.

2. I had occasion to consider this question in the case of Soniram Rameshur v. Mary Pinto ILR (1933) Rang. 467 when sitting as a judge of the Rangoon High Court, and, following the decision of Sale, J., in Bala Dassee v. Butto Kristo Bairagee ILR (1906) Cal. 1040 held that inasmuch as the Crown has priority over unsecured creditors in the payment of debts the Court can, on application and without a formal attachment being issued, order the payment of a Crown debt due by the debtor where there are funds in Court belonging to the debtor. The District Munsiff referred to this decision in his order. The order which I passed in that case was passed by consent, and the only arguments were those addressed to the Court on behalf of the Crown, but the question has been fully argued before us to-day and I see no reason for changing the opinion there expressed.

3. It has been suggested that inasmuch as Section 46 of the Indian Income Tax Act provides modes for the recovery of arrears of Income Tax the Crown is not entitled to adopt any different method. Sub-section (2) states that the Income Tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from the assessee the amount specified as if it were an arrear of land revenue. Without prejudice to any powers of the Collector in this behalf he shall for the purpose of recovering the amount have in respect of the attachment and sale of debts due to the assessee the powers which, under the Civil Procedure Code, a Civil Court has in respect of attachment and sale of debts due to a judgment-debtor for the purpose of the recovery of an amount due under a decree. By Sub-section (3) it is provided that in any area in respect of which the Commissioner has directed that any arrears may be recovered by any process enforceable for the recovery of an arrear of any Municipal tax or local rate imposed under any enactment for the time being in force in any part of the province, the Income Tax Officer may proceed to recover the amount due by such process. Under Sub-section (5) if any assessee is in receipt of income chargeable under the head ""salaries"" the Income Tax Officer may require the employer to deduct from his salary what is due by way of Income Tax. This section, however, does not profess to be exhaustive and it cannot

without express words to that effect take away from the Crown the right of enforcing payment by any other method open to it. Therefore I do not

regard Section 46 as imposing a bar to an application of the nature of the one we are now concerned with.

4. The learned Advocate for the petitioner then contends that as a private person cannot enforce payment without first obtaining a decree, the

Crown is in the same position. The argument is that a private person is governed by the provisions of the Civil Procedure Code, and as there is

nothing in the Code which places the Crown in a different position the procedure there contemplated must be followed. I am unable to agree. This

argument ignores the special position of the Crown, the special circumstances, and the Court's inherent powers. It cannot be denied that the

Crown had the right of priority in payment of debts due to it. It is a right which has always existed and has been repeatedly recognised in India. If

the Crown is entitled, as it is, to prior payment over all unsecured creditors the position of secured creditors does not arise. I see no reason why

the Crown should not be allowed to apply to the Court for an order directing its debt to be paid out of monies in Court belonging to the debtor,

without having to file a suit. Of course it must be a debt which is not disputed or is indisputable. In this case the debt represents money due to the

Crown under the Income Tax Act and the demand of the Income Tax Officer is not open to question.

5. What would be the effect if the Crown were not able to apply to the Court for the withdrawal of the money in a case like this? According to the

argument it would mean that the Crown would have to file a suit against the debtor and the opposing creditor and then obtain an interim injunction

preventing the money from being withdrawn from Court pending the decision of the suit. When the suit came on for hearing the Court would be

bound to decree it. Therefore there would be, not only a great waste of the time of the parties and of the Court, but the opposing creditor would

run the danger of being mulcted in costs.

6. The Court must pay money in its hands out to the person entitled to it. If the Court were asked to pay out money to A with the certain

knowledge that the money belonged to B it would naturally decline to do so and would make sure that B got it. Here, the Crown is entitled to the

money in Court - there is no question about this - and asks the Court to pay it out. The right to payment being indisputable justice requires that it

should be paid out to the Crown and formal application for payment has been made. It seems to me that both right and convenience demand that

the Court should exercise its inherent power.

7. At one stage the learned Advocate for the petitioner suggested that the attachment having taken place the petitioner was in the position of a

secured creditor. This argument is not open to him in view of the decision of a Full Bench of this Court in Krishnasawmy Mudaliar Vs. The Official

Assignee to the estate of S. Raghavalu Naidu, . He did suggest that this decision had been overruled by the Judicial Committee in Gummidelli

Ananta Padmanabhaswami v. Official Receiver of Secunderabad (1933) 64 M.L.J. 562 : L.R. 60 IndAp 167 : ILR 56 Mad. 405 (P.C.), but it is

clear from a perusal of the report that their Lordships there refused to go into the question and reserved their decision for a future occasion.

Consequently we have got to accept the decision in Krishnasawmy Mudaliar Vs. The Official Assignee to the estate of S. Raghavalu Naidu, as

stating the law correctly; and the petitioner is not in the position of a secured creditor.

8. The learned Advocate for the petitioner has also argued that unless there is some statute which expressly authorises a petition of this nature the

petition cannot be maintained. I have in effect already dealt with this question and it follows from what I have said that I do not consider that a

special Act of the legislature is required to enable the Crown to apply to the Court for payment out of money to which it has an undoubted right.

9. In the case of the The Deputy Commissioner of Police Vs. S. Vedantam and Another, , Cornish, J., took the same view. There money was due

to the Crown as arrears of tax under the Madras Motor Vehicles Taxation Act. The learned Judge also relied on the judgment of Sale, J., in Bala

Dassee v. Butto Kristo Bairagee ILR (1906) Cal. 1040.

10. For these reasons I am of the opinion that the District Munsiff came to the correct conclusion and his order should not be disturbed. The

petition will be dismissed with costs.

Varadachariar, J.

11. My doubts have been indicated in the order of reference. I am not able to say

that they have been wholly dispelled. They are, however, not serious enough to warrant my dissenting from the conclusion which my Lord and my learned brother have reached on what is after all a question of procedure; even when making the reference, I felt no doubt as to the right of the Crown to priority. I may add that the balance of convenience certainly seems to be in favour of the view indicated in the judgment just delivered. I, therefore, agree with the order dismissing the petition with costs.

Mockett, J.

12. I agree with my Lord the Chief Justice. It must be remembered that the Court holds the money for the purpose of paying it to the person entitled to it, and in this presidency so long as the decision in Krishnasawmy Mudaliar Vs. The Official Assignee to the estate of S. Raghavalu Naidu, is law, as it undoubtedly still is, there is no difficulty with regard to third parties claiming prior rights by way of attachment. The position being so, this case does not seem to present any difficulty. As a matter of expediency it is obvious that the course adopted here is the better. The alternative seems to be this, as have been pointed out by my Lord the Chief Justice : a suit is filed with regard to a matter which the defendant cannot contest and the only result is that there is delay and unnecessary expenditure for the parties. What happens under the present procedure? Here is this money lying in Court for the purpose of being paid out to the person who is entitled to receive it. The Crown goes to the Court and says:

Here is a debt which is due to me about which there can be no dispute.

13. I consider that under those circumstances the Court can rightly invoke its power u/s 151 of the CPC in making the payment to the person entitled to it. Cornish, J., in the case to which my Lord has referred The Deputy Commissioner of Police Vs. S. Vedantam and Another, draws attention to a decision from which I have derived assistance, In re Henley & Co. (1878) 9 Ch. D. 469 In that case a bench consisting of James, Brett and Cotton, L. JJ., emphasised that the fact that a remedy given by a statute for the recovery of a debt due to the Crown in no way takes away the right of the Crown to invoke other methods if it thinks fit.

14. I agree that the decision of the Court below is right and that this petition should be dismissed with costs.