

(1941) 09 MAD CK 0054
In the Madras High Court

Manikkam Chettiar and Others

APPELLANT

Vs

Krishnappa Chettiar

RESPONDENT

Date of Decision : 04-09-1941

Acts Referred:

Citation : AIR 1942 Mad 382 : (1942) 55 LW 24 : (1942) 1 MLJ 24

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—The appellants are certain of the defendants in a suit on a mortgage deed (Ex. A), dated 6th March, 1926. The mortgage was executed by four brothers, namely, defendants 1 to 3 and one Gopalaswami who is dead and who is represented by defendants 4 to 8. The appellants represent the branches of the 1st and 3rd defendants who were held by the lower Court not to be agriculturists. The only question argued in appeal relates to the correctness of this conclusion.

2. It was conceded in the lower Court that the appellants had a saleable interest in agricultural property, but the plaintiff sought to exclude them from the benefits of the Act on the basis that both the 1st and 3rd defendants had been assessed to profession-tax so as to bring them within the purview of proviso (B) to Section 3 (ii) of the Act and applying Section 6 of the Act, the same exclusion operated against the sons of these two defendants. The evidence regarding the assessment of these two defendants to profession-tax was by no means complete. With reference to the 1st defendant there was. a certificate (Ex. D) showing that he was assessed to profession-tax for the half years ending 31st March, 1936 and 30th September, 1937 on a half yearly income of Rs. 300 which of course is not sufficient to disqualify him under proviso (B). There was also filed an extract from the Profession Tax Demand Register (Ex. D-I) which showed that in 1936-37 the firm of S. M. P. C, K. Chidambaram (rounder was assessed on a half yearly income of Rs. 360 and the plaintiff gave evidence that the 1st defendant was a partner in that firm, though his evidence was a little obscure.

The 1st defendant himself said that he was a working partner with Chidambaram Chetti getting a five annas share during the relevant period. No question was asked to elucidate the difference in the name of Chidambaram Chetti from the name of the firm Chidambaram Gounder, and he was not asked whether Ex. D-I related to the profession-tax of the firm of which he was a partner. With reference to the 3rd defendant the evidence is even-more incomplete. Ex. E shows that the 3rd defendant was assessed to profession tax on a half yearly" income of Rs. 200 for the half year ending 31st March, 1936 and on a half yearly-income of Rs. 180 for the two succeeding half-years. The certificate, like Ex. D, does not state .that he was assessed within the period referred to in Proviso (B). There is also an extract from the Profession-tax Demand Register ..(Ex, E1) which shows that the. firm of K. N. Ponnusiwami Gounder was assessed on a half-yearly income varying between Rs. 1,600 and Rs. 2,000 for the relevant period; but this register. just like Ex. D-I, does not show the actual date of the assessment. The plaintiff says that the 3rd defendant is a partner in the firm of K. N. Ponnuswami Gounder and Co., receiving a four annas share of the profits. But he makes the mistake of saying that Ex. E relates to the 3rd defendant's profession-tax for that business and that Ex. E-I relates to the following year. The evidence of the 1st defendant is that the 3rd defendant was a partner with Ponnuswami Chetti not Ponnuswami Gounder, and that his share might be a four annas share. He appears to concede that Ex. E-I is the relevant assessment document. It will appear that the precise facts regarding the assessment to profession-tax have not been very clearly elicited, though it would seem probable that each of these defendants has been assessed to profession-tax on, his personal income and that each of them is a member of a firm which as such firm has been separately assessed to profession-tax.

3. Assuming for the moment that the personal income assessed to profession-tax together with the party's share in the firm's income which has been taxed, would, in the case of each of these defendants, if added together, be sufficient to bring them within the limit laid down in Proviso (B), is such a procedure contemplated by the terms of this proviso? Proviso (B) disqualifies a person who within the relevant period has been assessed to profession-tax on a half-yearly income of more than Rs. 300 derived from a profession other than agriculture. "Person" under Act IV of 1938 does not include an unincorporated company or association. It would seem therefore to follow that what disqualifies a person under proviso (B) is the individual assessment of that person to profession-tax on a certain stipulated income. Under the. District Municipalities Act, however, a partnership is included in the definition of "company" and for .the purposes of profession-tax a company is a separate unit classified and assessed to profession-tax without reference to the private income of the individuals of whom the firm is composed. It has, we think, been settled that when a firm has been assessed to profession-tax, the individual members of that firm cannot be assessed again on their share of the income of the firm. The principle laid down in *Davies v, President of the Madras Municipal Commissioner* I.L.R.(1890) Mad. 140 has been

treated as applicable under the new District Municipalities Act in *Narasimha Rao v. Chairman Municipal Council, Narasaraopet* (1934) 68 M.L.J. 162. It does not appear that when an individual is assessed to profession-tax under Section 93 of the Madras District Municipalities Act, the income to which he may be entitled as a member of a firm which is separately assessed will be taken into consideration in determining the class into which his income will fall under Schedule IV, Rule 16. Whether, that be so or not, the tax imposed on the firm is clearly an assessment on that firm as the separate unit and the tax imposed on the individual is imposed upon that individual without reference to his capacity as a member of the firm. It seems therefore to follow that when the firm is assessed to profession-tax, it cannot properly be said that the individual partner is assessed to profession-tax, though no doubt indirectly he pays that tax. Granting so much, it is difficult to say that in applying proviso (B) one is entitled to take into consideration not only the income in respect of which the alleged agriculturist has been actually assessed to profession-tax under the District Municipalities Act, but also his share of the income of a firm, which firm has been separately assessed to profession-tax. No doubt this conclusion may involve the anomalous result that a partner of a firm may claim to be an agriculturist and as an agriculturist scale down his liability under a partnership debt, though the firm itself may be paying a large sum as profession-tax under the District Municipalities Act. But the fact that the words of the proviso lead to an anomalous result is not in our opinion a sufficient justification for adding to those words other words which the proviso does not contain.

4. Our attention has been drawn to the decision in *Venkadari Somappa Vs. Naresepally Venkataswamy Chetty*, . That was a case relating to the exclusion of a person from the definition of "agriculturist" by reason of the fact that the partnership of which he was a member, had been assessed to Income Tax. It was pointed out that when the income of a partnership is assessed to tax under the Income Tax Act, what is really assessed is nothing else than the income of the individual partners and having regard to the terms of the Income Tax Act, it could not be said that the individual partner had not been assessed to Income Tax when the firm of which he was a member had been so assessed. It was therefore held that for the purpose of applying proviso (A) to Section 3 (ii) of Act IV of 1938, the tax to which a person had been assessed as a member of a partnership had to be taken into consideration in deciding whether or not a person was an agriculturist. We do not think that the principle of this decision is applicable to a case of assessment to profession-tax, the reason being that profession-tax under the District Municipalities Act is assessed on the basis that the firm is a distinct person and there appears to be no assessment of the individual as a member of the firm. In this view we must differ from the conclusion of the learned Subordinate Judge and hold that the appellants have not been shown to be disqualified from claiming relief as agriculturists.

5. The 12th defendant, one of the minor sons of the 1st defendant has, apparently owing to some difficulty about his guardian, not been made one of

the appellants before, us. But he stands in -exactly the same position as the other sons of the first defendant and it would be inequitable not to give to him the relief to which he is entitled on our findings.

6. In the result therefore the appeal is allowed with costs and the decree of the lower Court will be modified so as to make defendants .1, 3, 9 to 12 and 15 liable only for Us. 3,500 (half the principal) and interest at 6 1/4 per cent, per annum from 1st October, 1937 to the date of plaint, namely, Rs. 220 and thereafter at the same rate till the date fixed for payment which will be three months from today and proportionate costs in the lower Court and subsequent interest at 6 per cent.