(1994) 03 MAD CK 0126

In the Madras High Court

Case No : Writ Petition No. 2336 of 1980

Mariam Misria APPELLANT

Vs

Tax Recovery Officer RESPONDENT

Date of Decision : 24-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 159, 159(4), 222

Citation : (1995) 129 CTR 23 : (1995) 211 ITR 807

Hon'ble Judges : T. Somasundaram, J

Bench : Single Bench

Advocate : U.N.R. Rao, for the Appellant; N.V. Balasubramaniam, for the Respondent

Judgement

Somasundaram J.

1. The prayer in the writ petition reads as follows :

For the reasons stated in the accompanying affidavit, it is prayed that this court be pleased to call for the records of Income Tax Certificate No. PV. 9712, dated March 9, 1957, by the respondent and quash by issue of a writ of certiorari or any other appropriate writ or direction all proceedings taken thereon since June 1, 1967, culminating in the I. T. C. P. No. 17 notice dated March 21, 1980, issued to the petitioner and thus render justice.

The case of the petitioner as disclosed in the affidavit filed in support of the writ petition is as follows :

The petitioner''s father, Hajee K. A. Peer Mohamed, died on June 1, 1967, and his elder brother, K. A. Meera Sahib, died in the year 1975. The petitioner''s father K. A. Peer Mohamed, and his brother, K. A. Meera Sahib, migrated to Ceylon in the year 1947. They jointly started a hotel at Kandy on a partnership basis in the name and style of Messrs. K. A. M. P. Meera Sahib and Brothers. The petitioner''s father had married one Ahose Umma in India before he left for Ceylon. She bore three children, namely, the petitioner, Subaida Umma and Habiba. On January 22, 1967, the petitioner''s father executed a will which was subsequently probated after his demise before the District Court, Kandy. By the said will all the properties of Hajee K. A. Peer Mohamed were bequeathed to his three daughters and to the Arabic School at Kalakad and as per the said will, the petitioner is entitled to 1/4th share in the properties of Hajee Peer Mohamed. On March 22, 1980, the petitioner received in Form No. I. T. C. P. No. 17, dated March 21, 1980, a notice from the Tax Recovery Officer stating that in the execution of the Certificate No. B. V. 9712, dated March 9, 1957, the Tax Recovery Officer has ordered the sale of the immovable property mentioned in the list annexed to the notice. The said notice was for settling the sale proclamation. The annexed list contains the items of properties which not only belonged to the estate of the petitioner''s father, the late Hajee Peer Mohamed, but also to his elder brother, Meera Sahib. The petitioner through her counsel, sent a notice on September 9, 1980, by registered post informing the respondent that she is having only 1/4th share in the items of properties mentioned in the annexure to the notice. The impugned notice is invalid because the impugned notice was sent only to the petitioner and no notice was sent to the other legal representatives of the deceased Hajee Peer Mohamed.

2. The respondents filed a counter-affidavit contending as follows : The Department has no information about the will dated January 22, 1967, executed by Hajee Peer Mohamed. The late Hajee Peer Mohamed and his brother, Meera Sahib, were partners in a firm known as Messrs. Meera Sahib and Brothers. Besides Peer Mohamed''s liability to tax in his individual capacity, he was also assessed and became liable to pay tax as partnership of the firm. In the said circumstances, a consolidated list of properties was shown in the certificate. The properties mentioned in the Income Tax certificate and the subsequent sale proclamation were properly included for the purpose of recovery of the amount of arrears of tax due from the assessee defaulter. Under rule 85 of Schedule II to the Income Tax Act, 1961, the petitioner as the legal representative of the assessee became the defaulter from the date of the death of the deceased assessee. The attachment of properties was made during the lifetime of the deceased. The arrears of tax relate to the firm, Messrs. K. A. Meera Sahib and Brother, and its partners, namely, K. A. Meera Sahib and the petitioner''s father, K. A. Peer Mohamed, pertaining to the assessment years 1949-50 to 1952-53. The demand notices were duly sent on the tax defaulters. The proceedings were continued to be taken against the legal representatives of the deceased from the stage at which it had reached on the date of death of the deceased by issuing a notice under I. T. C. P. No. 17 on March 22, 1980. There is no necessity to send separate notices to the legal representatives as it is permissible to continue the proceedings from the stage at which they had reached on the date of the death of the deceased assessee. Inasmuch as Hajee Peer Mohamed and Meera Sahib were partners in the firm, Messrs. Meera Sahib Thanaganar and Brother, their liability was joint and several. The properties of the defaulter were brought to

sale as early as September 25, 1964. At that time, the assessee was alive. On the death of the tax defaulter, the recovery proceedings can in law be continued against the legal representatives when a certificate had been duly issued for recovery. The properties had already been attached and in continuation of the said proceedings notice of sale proclamation was issued on March 22, 1980. The impugned notice issued for the recovery of the arrears of Income Tax of Peer Mohamed are legal and valid.

3. Mr. U. N. R. Rao, learned senior counsel, reiterating the contentions raised in the affidavit filed in support of the writ petition submitted that u/s 159(4) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), every legal representative shall be personally liable for any tax payable by him in his capacity as a legal representative that in the present case apart from the petitioner, there are other legal representatives, and that without issuing notice to the sisters of the petitioner who are the other legal representatives, the respondent cannot proceed against the petitioner by issuing the impugned notice to her alone. Learned counsel further contended that as per the probated will dated January 22, 1967, the petitioner is entitled only to 1/4th share in the properties of the deceased Peer Mohamed. While so, the respondent cannot proceed against the 1/4th share of the petitioner for the recovery of the entire arrears of tax. However, I am unable to accept the above contention of learned senior counsel for the petitioner. u/s 159 of the Act, the legal representative is made liable to pay out of the estate of the deceased, any sum payable by the deceased assessee. However, this liability of the legal representative is limited to the extent to which the estate of the deceased is capable of meeting the liability. Section 159(4) only provides that the legal representative becomes personally liable to the extent of the value of any asset of the estate which he disposes of while the liability for tax remains undischarged. Therefore, section 159(4) is not helpful to the petitioner. In the present case, as a matter of fact, all the properties of the deceased Peer Mohamed including the shares got by the petitioner''s sisters under the will are proceeded against for the recovery of tax arrears. It must be remembered that the respondent is entitled to proceed against any portion of the assets of the deceased Peer Mohamed in the hands of his legal representatives for the recovery of the tax arrears. Therefore, it is not possible to accept the contention of learned senior counsel that the Department cannot proceed against the 1/4th share of the petitioners for the recovery of the entire tax arrears due from the deceased assessee. Further, it must be pointed out that the properties of the defaulter Peer Mohamed were brought to sale by the Department for the recovery of the tax arrears even during the lifetime of the defaulter as early as September 25, 1964. On the death of the defaulter, the recovery proceedings can in law be continued against the legal representatives when a certificate had been duly issued for recovery. Inasmuch as the properties have already been attached, in continuation of the same proceedings the impugned notice has been issued to the petitioner, who is the legal representative of the deceased assessee. In these circumstances, I am of the

view that the notice challenged in this writ petition is perfectly valid and it is not liable to be quashed. There is no merit in this writ petition and it is liable to be dismissed.

4. Mr. U. N. R. Rao, learned senior counsel further submits that as per the will executed by her father, the petitioner and her two sisters are each entitled to 1/4th of the properties of their father, that the remaining 1/4th had been bequeathed to a school and mosque; that, on the basis of the will, the petitioner is in possession and enjoyment of her 1/4th share of the properties bequeathed under the will and not the entire properties listed in annexures 1 and 2 and that in view of the above position, the petitioner offers to pay 1/4th of the demand and, therefore, the Department may be directed to relieve the petitioner from her liability on receiving 25 per cent. of the tax arrears. Learned senior counsel further submits that the Department may be also asked to waive the interest portion of the amount demanded. On the facts and circumstances of the case and in view of the position of law referred to above in the proceedings under article 226 of the Constitution of India, it is not possible to issue such directions to the Department. However, it is open to the petitioner to make a representation to the competent authority, setting out all the facts and seek the relief of waiver of interest and also the other relief claimed in this petition. As and when such representation is made by the petitioner to the competent authority, such authority may consider the representation of the petitioner sympathetically taking into consideration the facts and circumstances of the case and pass appropriate orders according to law. With these observations, the writ petition is dismissed. No costs.