
(1970) 11 AP CK 0008
In the Andhra Pradesh High Court
Case No : L.P.A. No. 244 of 1968

Mattapalli Satyam

APPELLANT

Vs

Kolluru Krishna Murthy and Others

RESPONDENT

Date of Decision : 27-11-1970

Acts Referred:

Income Tax Act, 1922 — Section 46(2)

Citation : (1971) 2 AnWR 433 : (1972) 85 ITR 311

Hon'ble Judges : Madhava Reddy, J; Krishna Rao, J

Bench : Division Bench

Advocate : G. Balaparameswara Rao, for the Appellant; C. Poornaiah and M. Venkateswarlu, for the Respondent

Judgement

Krishna Rao, J.—This appeal is filed under Clause 15 of the Letters Patent, by the 11th defendant against the judgment of our learned brother Venkatesam J. in A.S. No. 194 of 1962. The suit O.S. No. 60 of 1961 was filed in the court of the Subordinate Judge. Visakhapatnam, by the respondents for recovery of money due under a simple mortgage bond dated June 23, 1952. The mortgagors fell into arrears of Income Tax and hence item No. 1 of the plaint schedule, an upstairs house at Vizianagaram, was sold in public auction at a revenue sale held in pursuance of a letter of request issued by the Income Tax authorities under the provisions of the Madras Revenue Recovery Act, 1864 (II of 1864). The suit was resisted mainly by the appellant herein contending that as there was a purchase at a revenue sale, he got the property free from all the prior encumbrances and that his property is not therefore liable for the suit mortgage. The trial court as well as this court in Appeal No. 194/62 negatived this contention raised by the appellant.

2. The main point for consideration in this appeal is whether the appellant (11th defendant) got the property free of all incumbrances u/s 42 of the Madras Revenue Recovery Act which reads as follows :

"42. All lands brought to sale on account of arrears of revenue shall be sold free

of all incumbrances, and if any balance shall remain after liquidating the arrears with interest and the expenses of attachment and sale and other costs due in respect to such arrears, it shall be paid over to the defaulter unless such payment be prohibited by the injunction of a court of competent jurisdiction."

3. The appellant can, therefore, succeed only if he establishes that the sale was effected for the recovery of land revenue. On behalf of the appellant reliance is placed upon Section 46(2) of the Indian Income Tax Act, 1922 (XI of 1922), which reads as follows:

"46. (2) 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 such assessee the amount specified therein as if it were an arrear of land revenue"

4. It is now settled by more than one authority which is binding on us that provisions like Section 46(2) provide merely the machinery or the procedure for recovering the arrears due to the Government under various heads and that in all such cases, the provisions of Section 42 of the Madras Revenue Recovery Act are not attracted. It is only when any public charge due to the Government is declared by an enactment to be treated as land revenue itself that the provisions of Section 42 of the Madras Revenue Recovery Act are attracted. In *Kadir Mohideen Marakkayar v. Muthukrishna Ayyar* I.L.R [1902] Mad. 230. a Division Bench of the Madras High Court consisting of Benson and Bashyam Ayyangar JJ. held, considering a similar provision of the Income Tax Act of 1864, as follows:

"We are clearly of opinion that Section 30 of the Income Tax Act has not the effect of converting Income Tax into an arrear of land revenue due in respect of the land which may be brought to sale for realisation of the Income Tax, but that its effect simply is to extend the procedure prescribed by (Madras) Act II of 1864 and (India) Act I of 1890, to the recovery of arrears of Income Tax."

5. Similarly in *Ramachandra v. Pitchaikanni* I.L.R [1884] Mad. 434. a sale was held under the provisions of the Madras Revenue Recovery Act for realisation of arrears of Abkari dues under the Madras Abkari Act. It was observed that the expression "in like manner as for the recovery of arrears of land revenue" occurring in the Abkari Act, does not have the effect of conferring a title upon the purchaser which is free from prior incumbrances. Reliance is placed for the appellant on a decision of Somayya J. in *Secretary of State v. Jodaraj Dhupajee* AIR 1942 Mad. 244. in which it was held that a sale under the Madras Revenue Recovery Act for the realisation of penal assessment due under the Madras Land Encroachment Act, 1905 (3 of 1905), passes a title which is free from incumbrances and that Section 42 of the Revenue Recovery Act is attracted. The cases arising under the Abkari Act and Income Tax Act were cited before the learned judge but they were distinguished on the ground that under the said Acts only the procedure for the recovery of arrears as under the Revenue Recovery

Act was attracted and that the particular arrears due to the Government were not equated to land revenue by any provision of law therein. On the other hand, it was pointed out that Section 3 of the Land Encroachment Act specifically provided that the penal assessment due under the Act shall be deemed to be land revenue. Hence it was held in the said case that as the arrears due under a different enactment are deemed by a fiction of law to be equivalent to land revenue dues, a sale under the Revenue Recovery Act is a sale for recovery of land revenue and that, under those circumstances, Section 42 is attracted. But the said decision is not applicable to the present case, for there is no provision in the Indian Income Tax Act equating the arrears of Income Tax to arrears of land revenue. The provisions of the Land Revenue Act are attracted only in so far as they related to realisation and procedure for the recovery of the land revenue. For all the above reasons, we hold that, in the present case, the appellant is not entitled to rely upon the provisions of Section 42 of the Madras Revenue Recovery Act. It follows that the sale in favour of the appellant is subject to the mortgage in favour of the plaintiff.

6. Another contention raised by the appellant's learned counsel is that no opportunity was given to his client in the trial court for filing any documents. He wants to say that he would have produced the order of attachment by the Collector under the Revenue Recovery Act to show that the mortgage itself was executed after the attachment and that the mortgage cannot, therefore, have any precedence over his sale. In the first place, it has to be observed that there is no such plea in the written statement of the 31st defendant. Even otherwise, the appellant made no attempt either in the trial court or even before our learned brother to produce any certified copy of the order of attachment. The learned counsel merely stated that he was not able to obtain a certified copy but he could have produced an endorsement from the authority stating that no certified copy would be given to him. Even if the appellant is able to establish that the mortgage was executed subsequent to the attachment, the mortgage would be void only against the claim enforceable under the attachment, namely, the claim of the Income Tax Officer and the mortgage will not be void for all purposes, so that the appellant who is a purchaser of the property can also ignore the mortgage as a void transaction. There is, therefore, no purpose in giving any further opportunity to the appellant to prove the said fact.

7. Another contention raised by the learned counsel for the appellant is that an Income Tax debt, being a Crown debt, he is entitled to priority over all other debts and that he being a purchaser in a sale for the realisation of a Crown debt he is entitled to priority over all other debts due from an assessee. We are unable to accept this contention as it is not only devoid of logic but of any authority.

8. For the above reasons, we dismiss this appeal with costs.