

(2000) 03 MAD CK 0044

In the Madras High Court

Case No : Writ Petition No. 11919 of 1989 and S.A. No. 1166 of 1989 and W.M.P. No. 17015 of 1999 and C.M.P. No. 9687 of 1999

M.K. Narayanan and 2 others

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 31-03-2000

Acts Referred:

Registration Act, 1908 — Section 17(1), 49

Tamil Nadu Urban Land Tax Act, 1966 — Section 13, 15, 2(6)(10), 5

Citation : (2000) 2 CTC 230

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. V. Perumal, for the Appellant; Mr. A. Chandrasekaran, Government Advocate (Taxes), for the Respondent

Judgement

1. The parties and the issue in the writ petition and the second appeal are one and the same, accordingly they are being disposed of by the

following common order. Aggrieved by the proceedings of the first respondent dated 14.4.1976. as well as the order of the second respondent in

its proceedings in U.L.T.A.No. 125 of 1976 dated 6.4.1977 the petitioners have filed the above writ petition for quashing both the orders. The

very same petitioners filed O.S.No.383 of 1984 before the Subordinate Judge, Tiruchirapalli for mandatory injunction directing the defendants

therein to effect separate/individual assessment in respect of urban land tax. The trial court dismissed the suit holding that it has no jurisdiction to

decide the issue in question. The plaintiffs filed appeal A.S.No.1 of 1989 before the District Court, Tiruchirapalli. The lower appellate court

confirmed the conclusion of the trial court and dismissed the appeal, against which the unsuccessful plaintiffs have filed second Appeal No.1166 of

1989.

2. For the convenience, I shall refer the parties as arrayed in the writ petition. The case of the petitioners is briefly stated hereunder:-

The property situate in Ward No. I Sengulam village. Block No.38 in T.S.No.103 comprising 13 grounds and 1104 square feet originally

belonged to one M.T. Karuppanna Konar, father of the first and second petitioners and grand-father of the third petitioner. On 7.9.75 there was a

family partition between the petitioners. In the family partition the petitioners were allotted a distinct share. After the date of partition, the petitioners

are paying the municipal taxes and house taxes separately. They are also paying the income taxes and first and second petitioners are paying wealth

taxes separately after the date of partition. The said partition has been accepted by the Income Tax authorities, Wealth-tax Authorities and

Municipal authorities. The entire extent of 13 grounds and 1104 sq.ft., was originally assessed to Urban Land Tax by the assessing authorities

constituted under the Tamil Nadu Urban Land Tax Act. 1966. After partition, the same was intimated to the assessing authorities with a request to

assess the holdings allotted to them as a individual unit. In spite of the same, the Urban Land Tax officer, first respondent herein, has assessed the

same by his order dated 14.4.76 in the joint names of the petitioners for Fasli 1385. Against the said order, the petitioners preferred an appeal

before the 2nd respondent herein and the latter by its order dated 6.4.77 which is also impugned, has negatived the claim of the petitioner for

separate assessment and remanded the matter with respect to quantum of assessment -to the first respondent for fresh disposal.

3. A similar request was also made by the petitioners for separate assessment for the subsequent faslis in regard to the properties allotted in the

partition deed. The request has been negatived by the authorities on the ground that the Special Tribunal for Urban Land Tax has rejected the

separate assessment sought for by the petitioners. The petitioners have filed a suit O.S.No.383 of 1984 before the District Munsifs Court, Trichy

for a mandatory injunction compelling the defendants to order individual assessments, on 12.8.1988 the suit was dismissed as not maintainable and

the appeal A.S.No.1 of 89 was also dismissed on 24.4.89 as not maintainable. In such a circumstance, having no other remedy, they filed the

present writ petition.

4. None of the respondents has chosen to file a counter affidavit disputing various averments made by the petitioners.

5. Learned Government Advocate by pointing out that in view of G.O.Ms.No. 2625, Revenue Department dated 27.12.1976, cancelling the

earlier orders passed by the Assessing officers, nothing survives for adjudication. However. Mr. V. Perumal, learned counsel appearing for the

petitioners as well as the appellants in the second appeal, would contend that in view of the partition effected on 7.9.1975 and in the light of

various provisions in the Urban Land Tax Act, they are entitled an order of individual assessment from the first respondent, since their request was

erroneously rejected by the respondents 1 and 2 on the sole ground that the partition deed relied on by the petitioners is un-registered one,

necessary direction has to be issued by this court for re-considering the matter and for passing separate assessment orders on the basis of partition

deed dated 7.9.1975.

6. It is the definite case of the petitioners that the property in question originally belonged to one M.T.Karuppanna Konar, the father of the 1st and

2nd petitioners and grand father of the 3rd petitioner. There was a family partition between them on 7.9.1975. It is also their definite case that in

the family partition, the three petitioners were allotted a distinct share. After the partition, according to them, they are paying municipal and house

taxes separately. They are also paying income and wealth taxes, it is further stated that the said partition has been accepted by the Income Tax,

Wealth-tax and Municipal authorities in all aspects. In this regard, the following definition in Section 2 of the Tamil Nadu Urban Land Tax Act,

1966 (hereinafter referred to as ""the Act"") are relevant:-

2. Definitions,--in this Act unless the context otherwise requires-

(1) xxx

(6) each urban land means the urban land comprised in a survey number or a sub-division number?

(7) xxx

(10) owner includes-

(i) any person (including a mortgagee in possession) for the time being receiving

or entitled to receive, whether on his own account or as agent, trustee, guardian, manager or receiver for another person or for any religious or charitable purposes, the rent or profits of the urban land or of the

building constructed on the urban land in respect of which the word is used;

(ii) any person/ who is entitled to the kudiwaram in respect of any inam land; but does not include-

(a) a short triemdar or

(b) any person who is entitled to the milwaram in respect of any inam land but in respect of which land any other person is entitled to the

kudiwaram.

Explanation."-for the purpose of clause (9) and clause (10), inam land include; lakhiraj tenures of land and shortriem land.

(13) urban land means any land which is used or is capable of being used as a building-site and includes garden or grounds, if any, appurtenant to a

building but does not include any land which is registered as wet in the revenue accounts of the Government and used for the cultivation of wet

crops.

Section 5 is a charging section, which reads thus-

Section 5. Levy of urban land tax,- Subject to the other provision contained in this Act, there shall be levied and collected for every fasli year

commencing from the date of commencement of this Act, a tax on each urban land from the owner of such urban land at the rate specified in the

schedule"".

A reading of the above mentioned provisions clearly shows that urban land tax is leviable on each urban land from the owner of such urban land

concerned at the rates specified. As per the definition 2 (6) each urban land means the urban land comprised in a survey number or a sub-division

number. As per the partition deed dated 7.9.75, the and in question had been divided among the petitioners and they also obtained separate

survey numbers/sub division numbers.

7. In the light of the above statutory provision, now I shall consider the decisions referred to by the learned counsel for the Petitioners. In

Karunakaran and brothers T. R., M/s, v. State of Tamil Nadu, 1985 W.L.R. 482, the Division Bench of this Court, after referring to definition

section 2 (6) and section 5 of the Act has concluded thus:- (para 7)

Admittedly, notwithstanding the fact that the two separated portions of S.No.329 are not separately recorded in the names of the two

Independent owners, the fact remains that the area which has fallen to the share of each of the two families in question in the partition dated 8th

July, 1939 in S. No. 329 will be the land which is comprised in S.No.329. There is, however, no jurisdiction in the assessing authority to levy tax

on urban land which is not owned by any person. In other words, only such urban land as is owned by each family will alone be liable to tax under

S.5. A composite valuation and taxation for the purpose of Sec.5 in respect of S.No.329 is, therefore, clearly bad. A view similar to the one which

we have taken above has found favour with the Division Bench of this Court in Messrs. Sarada Binding Works. Madras v. Asst. commissioner of

Urban Land Tax Madras, 92 LW 718. In paragraph 9 of this decision the Division Bench observed as follows.

„A con-joint reading of sec. 5 and the definition of each urban land, merely indicates that the land held by a person in a particular survey number

should be taken as a unit of charge and the entire holding of the person cannot be treated as a unit of charge except when his entire holding is in

one survey number. Thus, the levy under the Act is in respect of that urban land which is owned by an individual in a particular survey number.

Take a case where a land comprised in a particular survey number is owned separately by ten individuals. As per the charging section tax has to be

levied separately on the ten holdings by estimating the market value of the land in each holding if the owner has more than one item of urban land

situate in more than one survey number, the entire holding of the owner is not taken as a unit, but the land owned by him in each survey number is

taken as unit for purposes of valuation. Thus if urban lands in a survey number are owned by various individuals each portion of the survey number

owned by different individuals is to be separately valued...

These observations have our respectful concurrence.

Similar view has been taken by the subsequent Division Bench in Messrs. Sarada Binding Works, Madras v. Assistant Commissioner of Urban

Land Tax. Madras, 92 L.W. 718.

8. Regarding the rejection of the partition dated 7.9.75 on the ground that it is

an unregistered document, in C.S. Kumaraswami Gounder Vs.

Aravagiri Gounder and Another, , the Division Bench of this court, after referring to three different stages, has held that an unregistered partition

deed though not admissible to prove the terms of the partition can be admitted in evidence for proving the actual division and taking of possession

of the properties allotted to them. Their Lordships have observed thus:-

Thus it will be seen that in the case of an express, completed partition there will be three different stages-

(i) the stage of effecting a division,

(ii) the stage of dividing the properties by metes and bounds, and

(iii) the stage of each party taking possession of the properties allotted to his share.

As far as these three stages are concerned, it is conceded, having regard to the decided cases, that each and every one of them can be effected

orally without there being a document Even if there is a written document in respect of the first and third stages, then also it is conceded that the

document does not require registration, because neither the division in status nor the actual taking possession of the properties can be said to

create, declare, assign, limit or extinguish any right, title or interest to or in immovable property. Therefore, it is only with regard to the second

stage, namely, division of properties indifferent shares and allotment thereof to the various members, if the same is reduced to writing, it requires

registration under Sec.17 (1) (b) of the Act.

Their Lordships have also held that an unregistered partition deed though not admissible to prove the terms of the partition can be admitted in

evidence for proving the stages (1) and (3) namely the division in status and the taking of possession and the nature and character of the possession

of the shares allotted, these being collateral purposes. In Booraswami v. Rqjakannu and others, 1978 (I) MLJ 248. another Division Bench of this

court has held that unregistered partition deed can be looked into for finding whether there was a division in status or not. In para 10. Their

Lordships have concluded thus:-

It is thus clear that the unregistered document could be looked into for the purpose of finding out whether there has been any division in status.

9. It is clear that in our case the unregistered document dated 7.9.75 could be looked into for the purpose of finding out any division in status or

not. This aspect has not been considered by both the authorities, hence both the imputed orders are liable to be quashed on these grounds.

10. Under these circumstances, both the impugned orders dated 14.4.1976 and 6.4.1977 are quashed. The Assistant Commissioner, Urban Land

Tax, Tiruchirapalli, first respondent herein, is directed to pass fresh orders considering the partition dated 7.9.1975 and pass appropriate orders.

Net result, writ petition is allowed to the extent mentioned above. In view of allowing the writ petition, no separate further order is required in the

second appeal. No costs in both cases. All the miscellaneous petitions are closed.