

(1958) 08 MAD CK 0009
In the Madras High Court
Case No : Appeal No. 767 of 1954

M.R. Radhakrishnan and Another

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 08-08-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 1, 60
Income Tax Act, 1922 — Section 46(2)

Citation : AIR 1959 Mad 71 : (1959) ILR (Mad) 181 : (1959) 35 ITR 142 :
(1958) 71 LW 831 : (1958) 2 MLJ 563

Hon'ble Judges : P.V. Rajamannar, C.J.; Ganapatia Pillai, J

Bench : Division Bench

Advocate : R. Gopalaswami Iyengar and O.K. Ramialingam, for the Appellant;
The Government Pleader, C.S. Rama Rao Sahib and S. Ranganathan, for the
Respondent

Final Decision : Dismissed

Judgement

P.V. Rajamannar, C.J.—The plaintiffs in O. S. No. 50 of 1953 in the court of the Subordinate Judge of Madurai are the appellants before

us. They are the sons of the second defendant. They filed the suit for a declaration that the properties set out in the schedule to the plaint which

according to them were properties belonging to the joint family consisting of them and their father are not liable to be proceeded against for the

realisation of the Income Tax assessed on their father the second defendant for the assessment years 1945-46, 1946-47 and 1947-48, in so far as

it related to their interest in the suit properties.

They alleged in the plaint inter alia that the family of the plaintiffs and the second defendant was carrying on an ancestral business in textiles, that the

second defendant started and conducted several new businesses which were

speculative in character, including the import and export in several commodities, infringing the control orders in force at the time, and that he never bestowed any control over the affairs of the business nor maintained proper accounts. The plaintiffs submitted that the levy of assessment could not in law affect their interest in the joint family properties for the following among other grounds, namely, that the assessment on the second defendant was made on an estimate basis because proper accounts had not been maintained regularly and the assessment was made on the footing that several accounts had been suppressed by him and it was by reason of his negligence amounting to criminal omission to submit proper information to the Income Tax, department that he was assessed in a large sum which was far in excess of what would be legitimately payable on the actual income. The first defendant is the Union of India, representing the Income Tax department.

They denied the material allegations in the plaint and stated that the assessment was made on profits which the second defendant must have made and in any event the assessment could not be questioned in the suit. They also took an objection that the plaintiffs had no cause of action against the Government. This plea was evidently a plea that the suit was premature because only certificates had been issued by the Income Tax authorities u/s 46 (2) of the Income Tax Act. They pleaded that in fact the properties sought to be proceeded against were not properties belonging to the joint family.

2. The learned Subordinate Judge of Madurai who tried the suit held that the suit properties were joint family properties/ that the businesses conducted by the second defendant were not speculative in nature, that the second defendant had not mismanaged the conduct of the business and therefore the liability of the second defendant to pay Income Tax was a debt which the plaintiffs as sons were bound to pay from and out of the joint family properties under the doctrine of pious obligation. He further held that this debt could not be held to be tainted with immorality so as to bring it within the category of avyavaharika debts. He also upheld the objection raised on behalf of the Union of India that the suit was premature and hence not maintainable. On these findings the suit was dismissed. Hence the appeal.

3. At the outset we may briefly dispose of one of the grounds on which the suit was dismissed, namely, that the suit was premature. We are unable to agree with the learned Subordinate Judge. Admittedly the certificate u/s 46 (2) of the Income Tax Act had been issued. Under that provision once the Collector receives the certificate, he shall proceed to recover from the assessee the amount specified therein as if it were an arrear of land revenue.

The plaintiffs, apprehending that not merely the interest of the assessee, that is the second defendant, but the entire properties of the family including the shares of the plaintiffs might be brought to sale, have filed the suit. We fail to see why they should wait till a date is fixed for the sale or till the sale takes place. Mr. Rama Rao Sahib, who appeared for the Income Tax Department very fairly did not try to uphold the finding of the learned trial Judge on this point.

4. Mr. Gopalaswami Aiyangar who appeared for the plaintiffs-appellants, contended in the beginning of his argument that the Income Tax department would be entitled to recover the amount of the assessment only from the interest of the assessee, that is the second defendant, and the tax cannot be recovered from the shares of the plaintiffs who are not assesseees. In our opinion the proviso to Section 46 (2) of the Act which was added by Act XVIII of 1933, concludes the matter against the appellants.

Under that proviso the Collector for the purpose of recovering the amount of tax shall have the powers which under the CPC a civil court has for the purpose of recovering an amount due under a decree. Section 60 of the Code includes in the category of property liable to attachment and sale in execution of a decree, all saleable property, moveable and immovable, belonging to the judgment-debtor or over which, or the profits of which he has a disposing power which he may exercise for his own benefit.

It cannot be disputed that in execution of a decree against the father the decree-holder can bring to sale the entire family property alleging that the sons are bound by the debt on the foot of which the decree had been obtained. Of course it will be open to the sons to intervene and object to the sale of their shares on the ground that the debt is not binding on them. All that the plaintiffs have done in the suit is that instead of intervening in the course of the sale by the Collector they have themselves brought the suit raising

the question whether their shares are also liable to be sold to recover the tax assessed on their father. There is no substance in this contention.

5. The main contention of Mr. Gopalaswami Aiyangar, which requires consideration is that the doctrine of pious obligation would not extend to an obligation to discharge the suit debt, that is the arrears of tax which the second defendant is liable to pay. This contention is based on the fact that the assessments made on the second defendant were made not on the basis of the return submitted by the second defendant but on an estimate of the income. The reason for the Income Tax officers adopting this course was that in their opinion the return was not true and complete and several material books of account including day-books had not been produced before them and there was therefore a concealment of the true income. A tax levied on such basis would be in the nature of an avyavaharika debt because the conduct of the second defendant in suppressing the accounts was repugnant to morals. It is because of the dishonest conduct of the second defendant that a tax far in excess of what was properly leviable had been levied. So his argument ran.

He referred us to the decision of the Privy Council in AIR 1943 142 (Privy Council) where their Lordships accepted the translation of Colebrooke of the term ""avyavaharika debts"" as ""debts for a cause repugnant to good morals"" and then go on to observe that the term does not admit of a more precise definition. They observe :

When a particular debt is called into question, it will be the duty of the courts to examine its nature in the light of the principles mentioned above, which are not exhaustive but only basic, and to see whether in the circumstances it is of the kind which will give exemption to the son from the liability of paying it, on the ground that it is repugnant to morals.

This decision as well as other decisions were discussed in a recent decision of a Bench of this court to which one of us was a party in Perumal

Chetti Vs. Province of Madras and Others, . The following observations therein are pertinent :

Vyavahara is a word which has more than one meaning. But we agree with Mr. Venkatasubramania Aiyar that the word has a reference to the

ideal of good conduct according to the notions prevailing at the material time. But we are unable to hold that any debt which the father ought not to

have strictly contracted is necessarily a debt which is Avyavaharika. There should be an element of moral turpitude involved in the debt. It is only

then that it could be called Avyavaharika.

In the present case there is no element of moral turpitude on the part of the second defendant which was the origin of the debt. The assessment

actually made was not in any sense a penalty or fine imposed on the second defendant for non-production of accounts or for suppression of

material information. Indeed at the end of the assessment orders there is an intimation that action u/s 28 (1) (c) had been taken separately for non-

compliance with the terms of the notice issued u/s 22(4) and concealment of the income. Because the Income Tax officer was of opinion that the

actual income was more than what was shown in the return and there were no materials placed before him to ascertain exactly the true income, he

had to make the assessment on an estimate of the income, having regard to the material facts and circumstances.

6. The plaintiffs' contention must be rejected in limine because it has not been established by the plaintiffs that the income as assessed was more

than the income which would have been properly adopted if all the accounts had been placed before the Income Tax officer. It may be that if the

true facts are placed before the court, the assessment actually made may turn out to be less than what ought to have been made. There is no doubt

an allegation in the plaint that "the estimate made by the Income Tax Officer had out-grown several times (i.e.,) five or six times over the actual

income.

But this allegation has not been substantiated by positive evidence. This is not a case in which the sons are sought to be made liable for a debt

incurred by their father in the course of the business conducted by him. Presumably the father has made profits to which the plaintiffs have also

become entitled. The tax is an imposition under the statute on the basis of this profit.

7. Then a question may arise whether the debt was properly incurred. In the case before us the second defendant has not voluntarily incurred any

debt. On the income earned a tax has been imposed. One method of imposition is by levying the tax on an estimated income. The matter would of

course have been different if a fine had been imposed on the second defendant

for concealment of income and that fine is sought to be recovered from the shares of the sons as well. But this is not the case here. We agree with the learned Judge that by no stretch of imagination can the liability to pay the tax be brought under the category of avyavaharika debt,

8. During the course of his argument, Mr. Gopalaswami Aiyangar indicated that the arrears of Income Tax would fall directly within the scone of the rule of exceptions to the doctrine of Pious obligation contained in the texts relating to the subject. So far as we are able to understand him, the argument was based on the mention of the word tax in the translation of some of the texts. (Vide Palanivel Ramasubramania Pillay and Another, by mother Muthammal Vs. Sivakami Ammal, The original Sanskrit word which has been translated sometimes as tax and sometimes as toll is sulka.

It is impossible to be certain of the meaning of this word as it occurs in the merits. Sulka may mean either a toll or a tax or a nuptial present given as the price of a bride. A son should be relieved of the obligation to pay a toll which his father has become liable to pay. Probably this is because a toll is payable on the spot and as the obligation arises its the result of an evasion for which he may be convicted and fined, it was an obligation ex delicto. It may be the conduct of a father in evading payment of a toll was not good conduct.

The appellant's learned Counsel did not develop the point; nor did he cite any authority for the position that the word sulka occurring in the Smriti texts would apply to arrears of Income Tax. We have no doubt that the plaintiffs cannot escape their liability to discharge the debt incurred by the second defendant, that is, the arrears of Income Tax, on the ground that the obligation to pay the tax is an avyavaharika debt. The appeal fails and is dismissed with the costs of the first respondent, the Union of India.