(2002) 02 AP CK 0151

In the Andhra Pradesh High Court

Case No : Writ Petition No. 109 of 1996

N. Mangathayaramma and Others — APPELLANT

Vs

C.H. Krishna Murthy and Others — RESPONDENT

Date of Decision : 26-02-2002

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2002) 3 ALD 43 : (2002) 122 TAXMAN 686

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : R.V. Subba Rao, for the Appellant;

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—The main question that arises for decision in these writ petitions is whether house property bearing Municipal Door No. 28/49 situated at Subhash Road, Old Town, Anantapur, hereinafter referred to as the ''petition schedule property'', is liable to be sold for recovery of wealth tax arrears for the 2002(3) ALD May Ist assessment years 1982-83 to 1988-89 due from late Nimmalla Appanna. It is stated that N. Appanna and his father late N. Peddanna were Wealth Tax assessees and were residents of Anantapur town.

2. It appears that there were wealth tax arrears to the tune of Rs.5.5 lakhs owed by N. Appanna in respect of the assessment years 1982-83 to 1988-89. According to the Wealth tax authorities, the above house properties with appurtenant lands belonged to the joint family and were assessed in the hands of N. Appanna, Hindu United Family (HUF). In connection with the recovery of the said arrears of the wealth tax, the Tax Recovery Officer, Income Tax Department, issued a proclamation in Telugu daily news paper ''Eenaadu'' and brought to sell the petition schedule property and ultimately auction was conducted on 12.1.1996 and sale was knocked down in favour of the petitioner in W.P.No. 9227 of 1996 he being the highest bidder, for consideration of Rs. 6,58,000/-. As per the auction conditions, the purchaser deposited a sum of Rs. 1,65,000/- being

the 1/4th of the total value of the bid and the balance of the bid amount of Rs.5 lakhs was also subsequently paid by the purchaser to the Tax Recovery Officer vide Bank draft No. 301196, dated 24.1.1996 drawn on Andhra Bank, Tirupati and the Tax Recovery Officer issued receipt dated 25.1.1996 in favour of the purchaser for having received the entire sale consideration. However, sale deed was not executed in favour of the purchaser. In the said background, the purchaser viz., Sri Y.Madhusudhana Reddy filed W.P.No.9227 of 1996 praying for a writ in the nature of mandamus directing the Tax Recovery Officer to issue sale certificate and also execute sale deed in his favour in respect of the petition schedule property. W.P.No.9227 of 1996 was filed in this Court on 23.4.1996.

3. Even before WP No. 9227 of 1996 was filed by the purchaser, WP No. 109 of 1996 was filed by N, Mangathayaramma, W/o Late Bhujangarayudu and her five children on 8.1.1996 praying for a direction to the Tax Recovery Officer and the concerned Inspectors of Income Tax not to auction the petition schedule property as well as other house properties bearing Municipal Door Nos.28/50, 28/51 and 28/52 situated at Subhash Road, Old Town, Anantapur and to declare the impugned action of auctioning the above properties as illegal. In the said writ petition, the petitioners claimed that the properties mentioned in the auction notification dated 7.1.1996 and published in Eenaadu daily are the properties of petitioners 2 to 6 and they are not the properties of late N. Appanna and therefore those properties are not liable to be attached and sold for recovery of wealth tax arrears due from N. Appanna. According to N. Mangathayaramma and her children, the above properties were acquired by them through a registered Will Deed dated 5.7.1969 executed by late Peddanna, who is the father of N. Appanna. They claimed that the house properties were the self acquired properties of Late Peddanna and therefore N. Appanna did not have any title or right or interest in those properties and the title of those properties was passed on to the children of N. Mangathayaramma and her late husband Bhujangarayudu. They also claimed that subsequent to the execution of the registered Will, late Peddanna executed a registered Codicil in the year 1974 apportioning all his properties among Bhujangarayudu and his children.

4. Further, one N. Bala Raju, S/o N. Siva Prasad filed WP No. 3870 of 1996 on 19.2.1996 questioning the correctness of the action of the Tax Recovery Officer dated 2.1.1996 rejecting the claim petition filed by the petitioner under Rule 11 of the Second Schedule to the Income Tax Act, 1961, on the ground of laches. According to this writ petitioner, he is the grandson of late N. Appanna and Appanna had two wives, Govindamma and Lalithamma by names and the petitioner and his brother by name Devarajulu are grandsons of N. Appanna through his second wife Lalithamma. It is the further case of this writ petitioner, that the above noted four items of house properties in question are the self-acquired properties of late N. Appanna. According to him, during the life time of N. Appanna, his children through his first wife Govindamma attempted to usurp all the properties of the joint family and therefore, N. Appanna executed a registered Gift Deed bequeathing house properties bearing Municipal Door Nos.

28/49, 28/50 and 28/52 in favour of the writ petitioner and his brother Devarajulu and the house property bearing Municipal Door No. 28/51 in favour of Smt. Lalithamma. After the death of Smt. Lalithamma, the house property bearing Municipal Door No. 28/51 devolved on the family of the writ petitioner by virtue of a registered Will executed by late Smt. Lalithamma and thus he became the absolute owner of the house property bearing Door No. 28/51 also.

5. Before proceeding further, at this stage itself, it needs to be noted that though house properties bearing Municipal Door Nos. 28/49, 28/50, 28/51 and 28/52 were sought to be auctioned and sold for recovery of the wealth tax dues due from N. Appanna, only the petition schedule property was auctioned and sold and the remaining house properties are not sold, obviously, because the money realised out of the sale of the petition schedule property could satisfy the outstanding wealth tax dues due to the Income Tax Department. In that view of the matter, the question to be considered is whether the Tax Recovery Officer in auctioning and selling the petition schedule property acted without authority of law and whether the said property was the property of N. Appanna or not?

6. The question whether the petition schedule property belongs to the petitioners in WP No. 109 of 1996 or the petitioner in WP No. 3870 of 1996, it is trite, is primarily a question relating to title. This Court cannot go into the title questions in summary proceedings under Article 226 of the Constitution. Although the petitioners in WP No. 109 of 1996 place reliance on the decree dated 28.4.1998 in OS No. 31 of 1978 on the file of the Court of the Principal Senior Civil Judge, Anantapur, it is stated at the Bar that that decree is assailed in AS No. 1229 of 1999 and the same is pending. It is true that the said suit OS No. 31 of 1978 was filed by the petitioners in WP No. 109 of 1996 against N. Appanna and others to declare their right to plaint ''A'' schedule properties and for recovery of the same by directing the defendants to deliver possession and for rendition of accounts etc. As could be seen from the decree produced before the Court at the time of hearing, plaint ''A'' schedule properties include the petition schedule property also. It is true that by the decree passed in the said suit, the plaintiffs (writ petitioners) right and title over plaint ''A'' schedule properties which include the petition schedule property is declared and there is also a direction to the defendants to deliver the possession of the same to the plaintiffs. It is stated that the said decree is stayed by the appellate Court. Be that as it may, from perusal of the decree passed in OS No. 31 of 1978, it does not seem that the petitioner in WP No.3870 of 1996 is a party to the said decree. Further, the authorities under the Wealth Tax Act are also not parties to the suit. According to the Income Tax Department, the petition schedule property bearing Municipal Door No. 28/49 is the properly of late N. Appanna. Even according to the purchaser, the said property belonged to late N. Appanna. Thus, there is a serious title dispute among the parties to these writ petitions. Title questions cannot be decided on the basis of affidavits and counter affidavits only. Further, from the pleadings of the parties, many factual controversies touching title and possession of the petition schedule property arise for resolution. Furthermore,

the decree passed in OS No. 31 of 1978 does not bind either the Income Tax Department or the purchaser.

7. It is a matter of record, the petitioners in WP No. 109 of 1996 in their letter dated 4.4.1994 addressed to the Tax Recovery Officer, Anantapur/Nellore have stated that they had no objection for the sale of the petition schedule property. The letter reads :

"Anantapur,

4.4.1994

To

The Tax Recovery Officer, Anantapur/Nellore

Sir,

Sub :--Wealth-tax arrears of N. Appanna-Regarding.

In the above matter we write to inform you that we do not object for the sale of the attached residential building bearing door No. 28/49, Subhash Road, Old Town, Anantapur towards the wealth tax arrears of N. Appanna, Anantapur. This is for your kind information.

Thanking you,

Yours faithfully,

Sd/-

1. N. Mangathayaramma

Sd/-

2. N.ThyagarJ.

3. Sd/-

N. Ramakrishna

4. Sd/-

N. PremaraJ.

5. Sd/-

N. NagaraJ.

6. Sd/-

N. Kalyani"

The petitioners in WP No. 109 of 1996 cannot be permitted to approbate and reprobate. Having agreed for the sale of the petition schedule property for realisation of the wealth tax dues, the petitioners in WP No. 109 of 1996 cannot turn round after the sale and question the validity of the sale.

8. There is also no merit in WP No. 3870 of 1996 which is directed against the order of the Tax Recovery Officer, Tirupati in rejecting the claim petition filed by the petitioner therein under Rule 11 of the Second Schedule to the Income Tax Act, 1961, because the said petition was filed only after final proclamation was issued for sale of the property. The observation made by the Tax Recovery Officer, Tirupati that the intention behind making of the claim petition at a belated stage is a dilatory tactic and to delay the recovery of the tax dues, is fully justified. The reasons stated above to dismiss WP No. 109 of 1996 equally hold good for dismissal of WP No. 3870 of 1996.

9. In the result and for the foregoing reasons, we dismiss WP No. 109 of 1996 and WP No. 3870 of 1996, and allow WP No. 9227 of 1996, and direct the respondent in Writ Petition No. 9227 of 1996 to issue necessary sale certificate and also execute sale deed in favour of the petitioner in respect of the petition schedule property i.e., house property bearing Municipal Door No. 28/49, Subhash Road, Old Town, Anantapur, pursuant to the public auction conducted by him on 12.1.1996. The parties are directed to bear their own costs in all the writ petitions. However, we make it clear that this order shall not preclude the petitioner in W.P.No. 109 of 1996 and or the petitioner in W.P.No. 3870 of 1996 from pursuing appropriate legal remedies as regards their respective claims over the petition schedule property before a competent Civil Court by impleading the concerned authorities of the Income Tax Department and the petitioner in WP No. 9227 of 1996.