
(1955) 11 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 647 of 1955

New India Tannery, Kanpur

APPELLANT

Vs

M.P. Nigam and Others

RESPONDENT

Date of Decision : 04-11-1955

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1922 — Section 46, 46(2)

Citation : AIR 1956 All 179 : (1956) 26 AWR 34 : (1956) 29 ITR 54

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : M.H. Beg and G.S. Pathak, for the Appellant; J. Swarup, for the Respondent

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—This is a petition under Article 226 of the Constitution.

2. The facts of the case in brief are that a concern known as the Saghir Tannery of Kanpur owned machinery and some other property. The Saghir Tannery found itself in difficulties as it had to pay a sum of about Rs. 92,000/- to a bank and certain sums to a number of other creditors. The Saghir Tannery was a private limited company and the company consisted of two individuals, Mohammad Ibrahim and Jan Mohammad, who were also its Managing Directors (as appears from the copy of the sale deed filed by the petitioner in this case).

These two persons executed a registered sale deed in favour of Abdul Qaiyum and Altaf Ahmad on 30-5-1950 for a sum of Rs. 1,40,000/-. The amount, it appears, was duly paid by the purchasers, who got possession of the property sold. These two purchasers then entered into a partnership with Elahi Bux and admitted also a) minor Khurshid Ahmad to the benefits of the partnership. This partnership thus consisted of four persons and it commenced its business on 8-1-1951.

A duly "signed partnership deed was executed on 10-1-51. The partnership took on lease from Abdul Qaiyum & Altaf Ahmad the machinery and other properties which they had purchased from the Saghir Tannery by means of the sale deed dated 30-5-1950. The new concern was known as the New India Tannery, Kanpur, and it has continued to work since the date the partnership came into existence.

3. It appears that a large amount of in-come-tax was due from the Saghir Tannery which comes to about Rs. 42,000/- and the Tahsildar, Income Tax, Kanpur, respondent 1 to the petition, has been trying to recover this amount from the property which previously belonged to the Saghir Tannery and was sold by it to Abdul Qaiyum and Altaf Ahmad. On 25-3-1955, he actually succeeded in realising a sum of Rs. 3427/14/9 from the petitioner's firm, as the sum due from the Saghir Tannery on account of arrears of sales tax.

As regards the Income Tax of more than Rs. 42,000/-; he issued a questionnaire to the petitioner firm on 23-9-1953. The petitioner replied to the questionnaire protesting against any liability of theirs to answer the questions or for the payment of the Income Tax. On 23-9-1953, the Tahsildar again issued a letter to the petitioner stating that the petitioner had purchased the Saghir Tannery and, under the Land Revenue Act, the liabilities of the firm also devolve on the petitioner.

The petitioner sent a reply controverting the above proposition. The matter appears to have rested there for the time being till a fresh notice was issued to the petitioner on 1-2-1955 and it was said in this notice that the Saghir Tannery was sold to the petitioner with all its liabilities, and Abdul Qaiyum and Altaf Ahmad, two of the partners of the firm, were requested to attend the office of the Tahsildar.

On 25-7-1955, the Kurk Amin of the Tahsildar came to demand the money and threatened attachment of the premises and the stocks of the petitioner if the money was not paid within a few days. The present petition was then filed on 27-7-1955 praying for the issue of a writ of mandamus restraining the respondent 1 from taking any action against the petitioner's property for the recovery of the amount of Income Tax due from the Saghir Tannery.

4. The facts that I have stated above are contained in the affidavit, filed along with the petition, and in the annexures attached to the (affidavit. They are not denied in the counter-affidavit filed on behalf of the State. On the other hand it is stated in para. 3 of the counter-affidavit that there was a private limited company known as the Saghir Tannery Ltd. and the properties of this company were sold by its proprietors to Abdul Qaiyum and Altaf Ahmad.

The execution of the sale deed is admitted and it is not stated anywhere that the sale deed was not a legal and valid document. The plea taken in the counter-affidavit is that the petitioner company had undertaken the liability to pay this Income Tax also which is due from the Saghir Tannery. Reliance for this assertion

is placed on an observation made in the judgment of Suit No. 1673 of 1951 in which the learned Munsif held that Altaf Ahmad had admitted that the Saghir Tannery was sold to him and he had taken the liability to pay all the creditors of the Saghir Tannery. Copy of the statement of Altaf Ahmad has not been filed with the counter-affidavit.

5. With the rejoinder affidavit, the petitioner has filed a copy of the judgment passed in appeal against the decree passed by the learned Munsif in the above suit. The learned Civil Judge allowed the appeal holding that the petitioner was not liable for the payment of the amount and setting aside the decree passed against the petitioner. It may be stated, here that the suit was filed by a creditor of the " Saghir Tannery against the petitioner on the ground that the petitioner was bound to pay the creditors of the Saghir Tannery.

The suit was decreed by the first Court, but has been dismissed by the learned Civil Judge in appeal. As regards the statement made by Altaf Ahmad, the relevant portion has been quoted in para. 4 of the rejoinder affidavit, and a reading of this portion shows that Altaf Ahmad never admitted that he had undertaken the liability to pay the creditors of the Saghir Tannery. The sale deed itself has been filed and no such undertaking appears from the contents of that deed.

6. The first question that arises for decision is whether the petitioner firm or the two partners of it, namely, Abdul Qaiyum and Altaf Ahmad, who had purchased the property, ever undertook any liability to pay the creditors of the Saghir Tannery. A copy of the sale deed has been filed and it does not show that the vendees ever undertook any liability to pay the creditors of the vendor, excepting that they undertook to pay a sum of Rs. 1,40,000/-, which they have already done.

A major portion of this amount was paid towards payment of a debt due to a bank and the rest was deposited with a gentleman by the name of Mohammad Hamza of Kanpur. This gentleman paid up the creditors out of the ballance of the sale consideration. There is no evidence anywhere that the vendees ever undertook any liability to pay the creditors of the vendor generally, excepting that the amount of the sale consideration is proved to have been spent in payment of some dues of the vendor.

Apart from this, no other liability was undertaken by the vendees and they purchased the property free from all encumbrances. They were not required to pay the Income Tax, nor was there any stipulation regarding it in the sale deed. Altaf Ahmad's statement made in Suit No. 1673 of 1951 does not disclose that he ever admitted that he undertook to pay the creditors of the Saghir Tannery, and the observation of the learned Munsif on the point appears to be based on a misreading of the statement.

The learned Civil Judge allowed the appeal and held that the petitioner was not liable to pay the debts of the vendor Saghir Tannery. The reliance of the

respondent was only on the judgment of the learned Munsif, Which has been set aside on appeal. There is a properly executed document by the Managing Directors of the private limited company, and "prima facie" there has been a valid transfer of the properties sold In favour of the two partners of the petitioner firm, namely, Abdul Qaiyum and Altaf Ahmad. This question, therefore, must be answered against the respondents.

7. The learned counsel for the respondents has not been able to point out any provision of the Income Tax Act under which an amount due from an assessee may be recovered from the transferees. Section 46, Income Tax Act authorises the Income Tax officer to issue a certificate declaring the amount due from the assessee, and this certificate is then sent to the Collector for recovering the amount as land revenue or as a civil court decree.

The Collector is thus required to recover the amount from the assessee, and, if the sale deed in favour of Abdul Qaiyum and Altaf Ahmad is a valid sale deed, it is quite obvious that the Income Tax cannot be recovered from the property purchased by the above two persons from the Saghir Tannery. A transferee of property is not liable to pay Income Tax, which can be recovered from the assessee or his heirs or legal representatives and even in certain cases from the persons who have continued the same business.

In the present case, it cannot be said that the petitioner or its partners Abdul Qaiyum and Altaf Ahmad are assesseees, nor can it be said that they are heirs of the assessee. It is nobody's case that they have continued the same business and the realisation of the Income Tax has not been based on that ground at all. On the clearly proved facts of the case, it appears that the amount of the Income Tax due from the Saghir Tannery cannot be recovered from the petitioner or its partners.

8. The learned counsel for the respondents, however, tried in the course of the arguments to suggest that the sale deed executed by the Managing Directors of the Saghir Tannery was not a valid document and the two members of that company had no right to transfer that property. The Tahsildar never proceeded on this ground and even in the counter-affidavit no such suggestion has been made.

The respondents' counsel, therefore, could not be permitted to raise a fresh point in the course of the arguments concerning which the petitioner never had any opportunity of stating its case. Prima facie, the sale deed appears to be a valid document executed by the Managing Directors of a private limited company, and the document was obviously executed in the interests of the company. On the face of the document, as it stands, no illegality is made out.

9. The learned counsel for the respondents took a number of preliminary objections in this case, but as far as the liability of the petitioner is concerned, he was not able to point out any provision of law in the Income Tax Act or in any other Act, justifying recovery of the Income Tax from the petitioner firm.

10. One of the preliminary objections is that the Collector has not been impleaded as a party to this petition and the recovery of the tax is being made at the instance of the Collector. The certificate from the Income Tax Officer must have come to the Collector and presumably the certificate only required the Collector to recover the amount from the assessee.

The Collector sent the case to the Tahsildar, Income Tax, but there is no evidence to show that the Collector himself passed any order that the money should be recovered from the petitioner firm or from the property purchased by the two partners of this firm. It has not been even alleged that the Collector has passed any order against which the petitioner can be said to be aggrieved.

The petitioner is aggrieved against the actions and orders passed by the Tahsildar, Income Tax, Kanpur, and the Tahsildar has been made a party to the petition. In view of the above facts, I do not think it was necessary for the petitioner to have impleaded the Collector of Kanpur as a party to the petition.

11. The other preliminary objection was that the petitioner should have filed an objection against the recovery of the tax from the petitioner's property before the Tahsildar. But here again the learned counsel was not able to point out any provision of law under the Income Tax Act or the Land Revenue Act or the U. P. Zamindari Abolition, and Land Reforms Act authorising the petitioner to file an objection before the Tahsildar or the Collector. In the complete absence of any provision of law, permitting the filing of objections it cannot be said that the petitioner had any other suitable remedy which it failed to avail itself of.

12. The third objection of the learned counsel was that the petitioner should have filed a suit in the ordinary Civil Court for, an injunction to restrain the respondents from recovering the amount of this Income Tax from the petitioner or its property. It is possible that a suit may have been instituted at the instance of the petitioner. But the question before me is whether I should refuse to entertain this petition on the ground that a regular suit was also maintainable. The facts of the case are quite clear and the sale of the property in favour of Abdul Qaiyum and Altaf Ahmad is admitted in the counter-affidavit.

It is proved that the assertion that the vendees undertook to pay the liabilities of the vendor has no basis in point of fact. The statement of Altaf Ahmad does not contain any such admission and the judgment of the learned Munsif was clearly wrong and it has been set aside by the Civil Judge. If the sale deed in favour of the two partners is a valid document, then it is quite obvious, as far as the law stands, that this tax cannot be recovered from the property purchased by these partners from the Saghir Tannery.

The facts of the case being quite clear, I do not think I would be justified in refusing to entertain this petition and referring the petitioner to a regular suit. The petitioner is carrying on a trade and has a fundamental right to carry it on. The recovery of this amount from the petitioner is bound to affect the petitioner's business & thus interfere with its fundamental right of carrying on its

trade. If any doubtful questions of fact had been raised, I might have been inclined to refer the petitioner to a regular suit, but no such questions of fact arise in the case and I do not think there is any good reason for asking the petitioner to pursue the lengthy process of instituting a regular suit in the civil court.

13. For the reasons given above I think that this petition must be allowed. I consequently allow the petition and direct the issue of a writ of mandamus to the respondents not to take any steps to recover the amount of Income Tax, aggregating more than Rs. 42,000/-, due from the Saghir Tannery Ltd., from the property and other assets in the possession of the petitioner; as long as they do not succeed in having the sale deed dated 30-5-1950 set aside by a competent court or authority.

14. The petitioner will be entitled to the costs of this petition.