

**(1997) 10 MAD CK 0016**

**In the Madras High Court**

**Case No :** Tax Case Petition No's. 1401 and 1402 of 1992 Ist October, 1997

P. SELVAMONY

APPELLANT

Vs

STATE OF TAMIL NADU

RESPONDENT

**Date of Decision :** 01-10-1997

**Acts Referred:**

**Citation :** (1999) 151 CTR 406

**Hon'ble Judges :** R. Jayaswaha Babu, J;R. Jayasimba Babu, J;B. Akbar Basha Khadiri, J

**Bench :** Full Bench

**Advocate :** K Mani, for the Petitioner and K Ravirala Pandian,s, for the appearing parties;

## Judgement

R. JAYASWHA BAB U, J. :

The assesseees are aggrieved by the order of the CIT suo motu revising the order of assessment made on the assesseees for the asst. yr. 1987-88 as

also the commutation permitted for the asst. yr. 1988-89. The CIT has set aside those assessments and has held that the income of the assesseees

who are husband and wife should be clubbed and the entire income assessed in the hands of the husband.

2. It is not in dispute that the husband and wife have separate holdings from which they derive Agricultural income. It is also not in dispute that the

properties were acquired by them in the year 1964 under sale deeds executed by their vendors, separately in the name of the husband and

separately in the name of the wife. It is further not in dispute that the assessment of these two individuals were done separately from the year 1975-

76 right up to 1987-88. The assessments were made on the basis of the returns filed by them separately and for the asst. yr. 1988-89 they were

permitted to compound their liability for Agricultural Income Tax, under s. 65 of the TN Agrl. IT Act, again separately.

3. The CIT issued a show cause notice on 17th April, 1990, 26 years after the properties had been purchased separately in the names of husband

and the wife and about 15 years after their separate assessments had commenced. The provocation for the issuance of the notice appears to be the fact that the properties were sold by these two assessees, and the sale deeds executed by them were executed jointly.

4. In response to the show cause notice issued, the assessees had pointed out that the properties were acquired in the year 1964, that the value of

the land purchased by the husband Selvamony was Rs. 47,000 and the value of the land purchased by the wife was Rs. 46,000 and that the

consideration for the purchase made by the wife was paid from out of her personal sources which included her savings of Agricultural income from

her ancestral property, sale proceeds and the amounts received from the sale of her personal jewels. It was also stated in the reply to the show

cause notice that the properties were subsequently developed by them by obtaining loans by the assessees separately, in their individual capacity,

and that they had all along been assessed to Income Tax separately.

5. The CIT in the course of his order has observed that the husband had stated that the property was acquired in the year 1964 by himself and in

the name of his wife. The statement of the assessee was that such acquisition was effected separately from their own sources by the husband as

also by the wife. The husband has not stated that the consideration for the purchase of the property which stood in the name of his wife was paid

by him. This statement was to the contrary.

6. The CIT has found fault with the assessee for not having produced the sale deeds of the year 1964 and for not adducing evidence regarding the

separate source of funds of the wife.

7. The order of the CIT is, it was submitted by the learned special Government pleader, in accordance with the provisions of the TN Agrl. IT Act,

more particularly, s. 9(2)(a)(iii) of the Act which provides that in computing the total Agricultural income of any individual for the purpose of

assessment, there shall be included so much of the Agricultural income of a wife or minor child of such individual as arises directly or indirectly from

assets transferred directly or indirectly to the wife by the husband otherwise than for adequate consideration or in connection with an agreement to live apart.

8. See. 9(2)(a)(iii) of the Act is attracted only when there has been a transfer by the husband to the wife, of land from which the Agricultural income is derived and such transfer is for a consideration. It is only when the Revenue is able to show that there is such a transfer and that such transfer is for inadequate consideration, that s. 9(2)(a)(iii) of the Act can be invoked by the Revenue.

9. In this case, there has been no transfer at all, of the land by the husband to the wife. The question of adequacy of consideration does not, therefore, arise in the absence of any transfer. The CIT has in effect held that the wife was holding land benami, for the husband, from the time the lands were acquired, although under the sale deeds executed in her favour it was clear that legal title vested in the wife from the inception. The return filed by the husband and wife, with regard to the income derived by them from their respective holdings, had been accepted by the authorities for a period of 15 years.

10. In this background the suo motu revision effected by the CIT cannot be sustained. The ingredients of s. 9(2)(a)(iii) of the Act cannot be said to have been satisfied by the Revenue. The burden of proof was on the Revenue to show that there was a transfer by the husband for no consideration or the consideration, if any, was inadequate. The question of the wife having to adduce evidence regarding the source of her income 25 years earlier, and from out of which she acquired the property, which admittedly stood in her own name, did not arise.

11. Learned counsel for the Revenue however placed reliance on a decision of this Court in the case of Ganga Bai and another Vs. State of Tamil Nadu, The Court therein, placing reliance on s. 106 of the Evidence Act, held that the person who asserts that a certain amount of income has been derived from the lands held by him/her has to establish that fact as knowledge regarding the extent of the income would be possessed by that person not by the Revenue.

12. There is no presumption in law, whether rebuttable or irrebuttable, that the properties owned by the wife must be deemed to be the property

owned by the husband. The wife is as much entitled to own property as the husband is, she is equally entitled to receive income from the land. The

object of s. 9(2)(a)(iii) of the Act is only to ensure that income taxable in the hands of the husband is not sought to be reduced with a view to

reduce the burden of tax, by the transfer of part of holding to the wife for no consideration or inadequate consideration. There has been no such

transfer in this case. The acquisition at the very inception, was by the wife. The enquiry permissible under s. 9(2)(a)(iii) of the Act is a limited

enquiry confined to cases of transfer by the husband for no consideration or inadequate consideration, and cannot extend to calling into question

the title of the wife when such title had been acquired by purchase from a third party.

13. The order of the CIT is set aside and the revision petition is allowed.