
(1972) 03 MP CK 0004

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 27 of 1971

Pooranchand Ved Prakash

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 22-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Specific Relief Act, 1963 — Section 19

Transfer of Property Act, 1882 — Section 43

Citation : (1972) JLJ 525 : (1972) 17 MPLJ 772 : (1972) MPLJ 772 : (1973) 31 STC 170

Hon'ble Judges : S.M.N. Raina, J;N.C. Dwivedi, J

Bench : Division Bench

Advocate : M.L. Gupta, for the Appellant; J.P. Shrivastava, for the Respondent

Final Decision : Allowed

Judgement

S.M.N. Raina, J.

This is a petition under Articles 226 and 227 of the Constitution.

The case of the petitioner is as follows: The petitioner purchased house No. 17 in Topi Bazar, Lashkar, from Narain Das, Phul Bai and sons of Narain Das for a consideration of Rs. 31,000 by a registered sale deed dated 17th June, 1969 (annexure 1). The purchase according to him was bona fide and for consideration. The house was, however, attached by the Sales Tax Officer-cum-Additional Tahsildar, Gwalior, on 23rd September, 1969, in proceedings for recovery of sales tax against Narain Das. According to the petitioner, he was not at all aware that any sales tax proceedings were going on or that Narain Das was an assessee and was in arrears of tax. The petitioner submitted an objection petition in respect of the attachment of the house before the Sales Tax Officer, but it was dismissed by order dated 23rd December, 1969 (annexure 2). The petitioner preferred an appeal before the Sub-Divisional Officer, The Sub-Divisional Officer remanded the case by order dated 8th April, 1970, vide

annexure 3. The Additional Tahsildar again rejected the objection petition by order dated 28th August, 1970, vide annexure 4 and the order was maintained in appeal by the Sub-Divisional Officer by order dated 26th November, 1970, vide annexure 5. Being aggrieved thereby, the petitioner has filed this petition praying that the impugned order be quashed.

It is not disputed that recovery proceedings were going on against the assessee at the time of the sale in favour of the petitioner. The question, therefore, is whether the house in question is liable to be attached in proceedings for recovery of sales tax against Narain Das in view of Section 33-A of the M. P. Sales Tax Act (hereinafter referred to as the Act), which is reproduced below for facility of reference :

Section 33-A : Where, during the pendency of any proceeding under this Act, any dealer creates a charge on or parts with the possession by way of sale, mortgage, exchange or any other mode of transfer whatsoever, of any of his assets in favour of any other person with the intention to defraud the revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the completion of the said proceedings :

Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceedings under this Act.

This section deals with transfer of property made by a dealer during the pendency of any proceedings under the Act. It lays down that any transfer made during the pendency of the proceedings with the intention to defraud the revenue shall be void as against any claim in respect of any tax or any other sum payable by the dealer as a result of the proceedings. The proviso to the said section, however, exempts a transfer made for valuable consideration and without notice of the pendency of the proceedings under the Act. The proviso is apparently to protect a transferee, who acquires the property for valuable consideration and without notice of the proceedings. In order to claim the benefit of this proviso, it is necessary for the transferee to show that he purchased the property for the consideration and that he had no notice of the proceedings at the time of the sale or prior to the sale.

The authorities seem to have proceeded upon the view that the expression "without notice of the proceedings" relates to the transferor (dealer) and not the transferee and, therefore, it is immaterial that the transferee had no notice of the proceedings at the time of the sale. We must say that the language of the proviso is not at all happy, but if this view is to be accepted, the proviso would be almost rendered redundant. In any case, it would be limited to cases where the proceedings are ex parte against the dealer without notice to him. There may be such extreme cases no doubt, but we do not think that such a construction is either proper or justified.

Ordinarily, a dealer is expected to have notice of the proceedings and there would be rare cases where on account of the proceedings being ex parte the dealer may have no notice. But in such cases, where the dealer has no notice, any transfer made by him in ignorance of the proceedings can be defended on the ground that it could not be with the intention to defraud the revenue. Since, in such cases, benefit can be claimed under the principal part of the section without the aid of the proviso, the proviso would be rendered redundant if it is construed in the manner suggested by the revenue authorities.

The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein, which, but for the proviso, would be within the purview of the enactment. In *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, , their Lordships made the following pertinent observations regarding a proviso :

The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment.

Similarly, in *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, , their Lordships made the following observations regarding a proviso in paragraph 9 :

As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule.

The proviso, in our view, carves out an exception in favour of a bona fide transferee for consideration, even though the transfer having been made by the dealer with intent to defraud the revenue, may be hit by the main part of the section.

The main part of Section 33-A of the Act does not take into account the position of the transferee at all. It merely provides that the transfer by a dealer shall be void, if it is made with the intention to defraud the revenue. If the proviso had not been enacted, the intention of the transferor alone would be material and for the purposes of determining the intention of the transferor, the question whether he had notice of the proceedings or not, could be taken into consideration without the aid of the proviso. The object of the proviso, in our view, is clearly to give protection to a bona fide transferee for consideration. Such protection has been given to such a transferee even under other enactments such as Section 19 of the Specific Relief Act and Section 43 of the Transfer of Property Act. The proviso seems to have been enacted in keeping with this policy. We, therefore, hold that where a transferee acquires property from a dealer bona fide for valuable consideration without notice of the proceedings, the transfer in his favour shall be saved under the proviso even though it is hit by the main part of the section. The view taken by the revenue authorities that the expression

"without notice of the proceedings" in the proviso refers to the dealer and not to the transferee is not correct. Thus, there is an error of law apparent on the face of the record which has resulted in miscarriage of justice.

We, therefore, hereby allow the petition and quash the order of the Additional Tahsildar, Gwalior, dated 28th August, 1970 (vide annexure 4) and of the Sub-Divisional Officer, Gwalior, dated 26th November, 1970 (annexure 5). It would be open to the authorities to consider the objection of the petitioner afresh in proper perspective as indicated above. We make no order as to costs in the circumstances of this case. The security amount shall be refunded to the petitioner.