

(1983) 05 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 3331 of 1972

Raja Avadhesh Pratap Mall

APPELLANT

Vs

Asst. Controller of Estate Duty

RESPONDENT

Date of Decision : 02-05-1983

Acts Referred:

Estate Duty Act, 1953 — Section 4

Citation : AIR 1983 All 375 : (1984) 40 CTR 159 : (1984) 148 ITR 591 : (1984) 16 TAXMAN 93

Hon'ble Judges : V.K. Mehrotra, J; R.M. Sahai, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Faced with the piquant situation of having lost title to property in consequence of a decree passed by this court in first appeal arising out of a suit for declaration, and yet an inclusion of the same in the determination of assets, under the E.D. Act, 1953, the petitioner came to this court under Article 226 of the Constitution of India in 1972 seeking the quashing of the order passed by the Asst. Controller, as far back as December 11, 1962.

2. Before examining whether this court should refrain from exercising its extraordinary jurisdiction as the petitioner came to this court after a lapse of ten years, it is appropriate to narrate the background in which the events moved as it shall help not only in resolving the controversy on merits but shall assist in deciding the preliminary objection raised by learned standing counsel for the Commissioner of Income Tax. One Kamal Kishore Mall was the Raja of what was known as Majhauuli Estate. After his death his widow, for brevity "Rani", continued in possession over the estate till 1937. On her death, Balbhadra Mall, the grandfather of the petitioner, a collateral of the Raja, entered into possession. In 1940, the mother-in-law of the Rani filed Suit No. 41 of 1940 for seeking declaration and possession over the property. Another suit was filed by one Pratap Kishore Mall claiming to be the adopted son of the Rani. The later suit,

however, was dismissed and the judgment became final. Suit No. 41 of 1940 was contested by Balbhadra Mall. It was claimed that Majhauri Estate was an ancient impartible estate governed by the rule of male lineal primogeniture. The suit was dismissed in 1945. First appeal against this was allowed on January 29, 1971. And we are informed that an appeal against this decree has been dismissed by the Supreme Court.

3. In between, the grandfather of the petitioner died on July 31, 1955. For the determination of estate duty, notices u/s 55 of the E.D. Act were issued to seven persons. No notice was issued to the petitioner. Yet he filed a statement of account in Form No. D-1 on November 15, 1961. It is not clear but it appears that after the death of the petitioner's grandfather, litigation started between his sons and heirs and Suit No. 72 of 1958 was filed. The Asst. Controller, after perusing the plaint of that suit, issued a show-cause notice to the petitioner to which he filed his reply on January 30, 1961. The Asst. Controller, after examining the claim made by the petitioner in the suit of 1958, held him liable to pay estate duty and the principal value of the estate which passed on the death of the deceased was determined at Rs. 9,43,348. Appeal against this order was dismissed as barred by time in 1963. In 1964, proceedings for reassessment were initiated u/s 59 of the Act. It was completed on November 26, 1969. On December 27, 1971, another notice u/s 58(4)/59 was issued by the Asst. Controller as there was a calculation error in the order, dated November 26, 1969. On January 13, 1972, an order u/s 61 was passed. While these proceedings were going on, the first appeal, as already stated, was decided by this court in 1971. Aggrieved by the orders, dated December 11, 1962, November 26, 1969, and January 13, 1972, passed by the Asst. Controller, the petitioner came to this court.

4. From what has been stated above it is apparent that the assets of Balbhadra Narain Mall, the grandfather of the petitioner, were determined for the purposes of estate duty on a claim made by the petitioner in civil litigation. Suit No. 72 of 1958 was an off-shoot of Suit No. 41 of 1940. The petitioner was claiming the property of his grandfather on the strength of a decree of the civil court. In the counter-affidavit it is alleged that Suit No. 41 of 1940 was not dismissed. That is not very relevant as, in the appeal, the decree in favour of Balbhadra Narain Mall was modified. Effect of this, under law, was that he was not the owner of the property or shall not be deemed to have been the owner at least from the date the suit for declaration was filed. It is settled that a decree for declaration dates back to the date of the suit. Therefore, the grandfather of the petitioner was not the owner nor he could be deemed to be the owner of those properties at the time of his death in 1955. It was, therefore, not his estate. u/s 4 of the E.D. Act, the levy could be made upon the principal value of property which passed on the death of a person. But if the property did not belong to the deceased at the time of his death, it could not form part of his estate. When the assessment was made, the civil suit was pending. On the date when the order was passed, on the basis of the claim in the civil court and the decree passed in the suit for a

declaration, probably no exception could be taken to it. But once the decree was set aside, the entire foundation for the order disappeared. The argument of the learned standing counsel based on the counter-affidavit that the order was passed as desired by the petitioner does not, in our opinion, make any difference. Even if the petitioner agreed for finalisation of the proceedings, it would not operate as an estoppel or debar him from challenging the order if it was wholly without jurisdiction due to a change of circumstances or of law.

5. Learned standing counsel for the Commissioner, however, vehemently argued that the petitioner having filed this petition after ten years of the date when the assessment order was passed was guilty of laches and this court should not issue writ in favour of a person who was not vigilant. He also urged that appeal against assessment order having been dismissed as barred by time and there being no error in that order, the petitioner was not entitled to any relief. According to the learned counsel, the Department being not a party in the civil suit or in the first appeal allowed by this court, it was not bound by it and the order passed by the Asst. Controller cannot be set aside on this ground.

6. Taking up the last objection first, the decree in civil suit was not collusive or fraudulent. It was fought out tooth and nail up to the Supreme Court. It may not be binding on the Department as it was not a party but a judgment on contest is certainly relevant and can be looked into to find out what was decided therein. Not only this : determination of estate duty proceeded on a claim made by the petitioner in civil suit. No other basis has been mentioned in the order. If the basis of claim itself disappeared due to grant of decree in first appeal which arose out of basic suit, which, of course, gave rise to other suits, then the factual basis on which the order proceeded was rendered non-existent.

7. As regards the dismissal of the appeal as time-barred against assessment order, it did not result in merger of the order. Apart from it, if the primary order against which the appeal was dismissed as barred by time is itself found to be erroneous, then the order passed in appeal shall not be an obstruction to the issuing of a writ by this court. For the exercise of extraordinary jurisdiction by this court, there is no time-limit. And rightly it can be determined by the court only if the circumstances were such as called for interference. Even where time to initiate any action is provided by statute, discretion is normally left to the court or the authority deciding the matter to extend the time, if it was satisfied that action could not be taken due to bona fide error or mistake. Where no limitation is provided, courts usually refuse to grant the indulgence if remedy is not sought within reasonable time. What would be reasonable time is again left to the wisdom of the court or the authority. Same principle applies in writ petitions. Refusal to grant relief to a person invoking the extraordinary jurisdiction is in the court's discretion. It is not a right of the opposite party. Unlike the Limitation Act, lapse of time does not vest any right, more so when it is stale. Although courts have always insisted that a person aggrieved by an order must not be guilty of laches, yet what would amount to laches cannot be

described with certainty. In the dictionary "laches" is defined to mean negligence in performance. In Stroud's Judicial Dictionary it is described thus : "laches or laches, is an old French word for slackness or negligence or not doing". As time to file an appeal or a revision either under the CPC or the Cr. PC is normally ninety days, the same period is adhered to in writ petitions directed against judicial, quasi-judicial or even administrative orders, not on any rule or law but for uniformity and certainty. Delay of a day, a week or a month may disentitle a person from seeking any relief. On the other hand, a delay of ten years, as in this case, may not amount to negligence or slackness. How to judge it or decide it ? There can be no straitjacket formula except the test of reasonable person. If in given circumstances a prudent and reasonable person should approach this court and he does not, then the court may refuse to exercise discretion in his favour. In fact, it is akin to estoppel by pass. If inaction or slackness results in an altering of position or change in circumstances to prejudice then the court may refuse to interfere. It is on this principle that courts have refused to interfere in matters of seniority, promotion, etc., after inordinate delay.

8. Can it be said that in challenging the order, dated December 11, 1962, the petitioner did not act reasonably. From the facts mentioned above, it is clear that, after the dismissal of Suit No. 41 of 1940, till its being set aside in 1971, there was no occasion for the petitioner to assume that the property which has devolved on him was not his or its title shall vest in someone else. No cause of action arose nor could the petitioner feel aggrieved by the order of December 11, 1962, till the first appeal was decided. No reasonable person could have challenged it prior to 1971. The petitioner was willing to pay the estate duty on the assets which devolved on him. He became aggrieved only when he lost the title to it. Then in 1964 the reassessment and, thereafter, rectification proceedings had been started. From a copy of the order passed by the Tribunal filed along with the supplementary affidavit, it appears that the reassessment proceedings have been annulled as no notice was served on the petitioner. This order was passed in 1970. Can it be said that the petitioner was negligent in the circumstances of the case ? In our opinion, no remedy under a statute can become barred. But constitutional redress does not suffer from this disability. If the petitioner is denied relief, it shall result in grave injustice, as he shall have to pay estate duty for property which never devolved on him, thus negating the primary purpose for which the court exists. Nor can the petition be dismissed, as due to lapse of time the State did not alter its position to its prejudice. It may arise where due to State action the rights of third parties may intervene (sic).

9. In the result, this petition succeeds and is allowed. Order dated December 11, 1962, passed by the Asst. Controller is quashed. He shall determine the principal value of the estate afresh after examining the changed circumstances. As order dated November 26, 1969, has been set aside by the Tribunal, it is not necessary to quash it. Nor is it necessary to quash order dated January 13, 1972, due to setting aside of order dated November 26, 1969, it automatically fell through. The petitioner shall be entitled to his costs.