(1940) 09 MAD CK 0071

In the Madras High Court

Rajoo alias Doraisami Goundar and Others APPELLANT

Vs

Palaniyappa Chettiar and Others RESPONDENT

Date of Decision : 16-09-1940

Acts Referred:

Citation : AIR 1941 Mad 289 : (1940) 52 LW 731 : (1940) 2 MLJ 817

Hon'ble Judges : Wadsworth, J

Bench : Division Bench

Judgement

Wadsworth, J.—These revision petitions all arise out of applications by sons of the late Bommayya Goundan u/s 19 of Act IV of 1938, to scale down decrees on promissory notes passed against their father.

2. It is conceded that Bommayya Goundan was the manager of a joint family consisting of himself and his sons and that the debts in respect of which the decrees were passed were joint family debts. The learned District Munsif has found that the sons were not entitled to the benefits of the Act, because Bommayya Goundan was in the year 1936-37 assessed to Income Tax at the time when he was the manager of the joint family. The main contention urged in these petitions was that Proviso A to Section 3(ii) of the Act did not apply in a case in which the assessment was made in the year 1936-37 but in respect of the income of the previous year. This contention cannot succeed having regard to the words of the proviso which are not identical with but substantially the same as those in Proviso B in respect of which we have held in C.R.P. No. 1020 of 1939 that the criterion is not the period in respect of which the assessment is made but the date of the assessment. Proviso A only disqualifies persons who have been assessed to Income Tax in either of the two financial years ending 31st March, 1938, and it does not lay down any restrictions regarding the period in respect of which that assessment might have been made.

3. A further contention relates to the question whether Bommayya Goundan was assessed in his individual capacity or as manager of the joint family. No doubt, if he was assessed expressly as manager of the joint family, all the members of

that family would be disqualified from claiming to be agriculturists. The Collector''s certificate Ex. 1 does not state that he was assessed in his capacity as manager of the joint family. The actual order of assessment was not produced in the trial Court but we are informed that it shows Bommayya Goundan to have been assessed in his individual capacity. The learned District Munsif does not appear to have applied his mind to the distinction between the assessment of a person in his individual capacity and the assessment of that person as manager of a joint family. He seems to have assumed that, because Bommayya Goundan was in fact the manager of a joint family at the time when he was assessed to Income Tax, the assessment was necessarily in respect of joint family income. It seems to us that this is a question which should be elucidated by the production of the actual order of assessment, and in view of the way in which the learned District Munsif has regarded the question, we do not think it improper to allow the petitioners an opportunity to produce the order of assessment at this stage. We may point out that the revision petitions are filed only on behalf of three of the sons, the other son being disqualified from claiming as an agriculturist on personal grounds. We therefore allow the three revision petitions and remit the applications so far as these petitioners are concerned to the lower Court for fresh disposal after allowing both parties to adduce evidence on the question whether Bommayya Goundan''s assessment was in his individual capacity or in his capacity as manager of the joint family. The petitioners having failed on their main contention we think it proper that each party should bear his own costs in revision.