

(2000) 03 AP CK 0047
In the Andhra Pradesh High Court
Case No : Appeal No. 824 of 1986

Reddi Suryakantam (died) and another	APPELLANT
Vs	
Yerra Veeraswami Naidu	RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938 — Section 3
Civil Procedure Code, 1908 (CPC) — Order 30 Rule 1
Income Tax Act, 1961 — Section 2(7)

Citation : (2000) 3 ALD 559 : (2000) 3 APLJ 82

Hon'ble Judges : B. Prakash Rao, J

Bench : Single Bench

Advocate : Mr. Krishna Koundinya, for Mr. M. Suryanarayana Murthy, for the Appellant; Mr. C. Poornaiah, Mr. V. Bhaskar Reddy, for the Respondent

Judgement

1. In this appeal, the plaintiff challenges the dismissal of his suit under the judgment and decree in OS No.289 of 1983 dated 18-11-1985 on the file of the Subordinate Judge at Kakinada. The suit claim is for recovery of Rs.32,209/- on the foot of a promissory note in Ex.A1 dated 2-12-1974 for Rs.10,000/- borrowed by the defendant which was agreed to be repaid on demand with interest at Rs.1.40 ps., per month on yearly compound. Of the said amount, the defendant paid a sum of Rs.1,000/- on 18-11-1977 and Rs.500/- on 6-10-1980 by making due endorsements on the reverse of the pronote. Later though the defendant addressed a letter dated 30-1-1983 in Ex.A6 requesting time for payment till March, 1983, the amount was not paid, It was claimed that the defendant is a business man doing business in the manufacture of tiles and is an income tax assessee and thus not entitled to the benefits of Act 4 of 1938 or Act 7 of 1977. The demands made by the plaintiff remained unheeded. Hence the suit.

2. In the written statement, the defendant admitted the execution of the pronote and the part payments made on 18-11-1977 and 6-10-1980. However, he denied that he is a businessman, an income tax assessee, and he is not entitled to the

benefit of Act 4 of 1938. It was claimed that he is an agriculturist owning Ac.13.90 cents in Kolamuru village of Bhimvaram Taluk doing personal cultivation and entitled to the benefit under the said Acts. It was further claimed that the plaintiff was entitled to only Rs.17,588.66 and not the amount as claimed on the date of filing of the suit and in fact he had already deposited Rs.19,684,66, which is excess.

3. On these varied pleadings, the lower Court has framed the issues mainly on the question, whether the defendant is entitled to the benefits under Act 4 of 1938 for scaling down the interest.

4. During the trial, the plaintiff examined himself as PW 1 and marked Exs.A1 to A6 and Exs.X1 to X4. The defendant examined himself as DW1 and marked Exs.B1 to B6.

5. The Court below on a consideration of (lie evidence and the material on record has held that the defendant is entitled to the benefits under Act 4 of 1938 since he himself was not an income tax assessee but the firm in which he was a partner was an assessee and which paid the tax and as such the defendant cannot be termed as an assessee.

6. In this appeal, Sri Krishna Koundinya, learned Counsel for the appellant, contended that though the proviso to the definition u/s 3(ii) of Act 4 of 1938 defining an "agriculturist" excludes a person if he has been assessed to income tax for two years prior to the incurring of the debt, the firm not being a legal entity, and admittedly the defendant being a partner therein cannot totally disown or disassociate himself with the firm and claim that he is not an assessee.

7. Sri C. Poornaiah, learned Counsel for the respondent defendant sought to sustain the judgment of the Court below on the ground that there is nothing on record to show that he himself was assessed and paid any tax and it was only the firm which was assessed and paid the tax and thus he cannot be termed as an assessee.

8. From these and other submissions as made on behalf of both the Counsel, the question which emerges for consideration is as to whether a partner in a firm which was assessed and paid tax., though himself individually not assessed or paid any tax, comes within the definition of an "agriculturist" u/s 3(ii) of Act 4 of 1938 without falling within the proviso thereto?

9. The admitted facts of the case are that the defendant borrowed the amount and executed Ex.A1 promissory note for Rs. 10,000/-promising to pay on demand with interest. However, the defendant claims that he being an agriculturist is entitled to the benefits under Act 4 of 1938. The plaintiff examining himself as PW1 reiterated the allegations as contained in the plaint and the defendant as DW1 reiterated from his written statement DW1 filed documents in Exs.B1 to B6 which consist of the partition deed, land revenue receipts and the encumbrance certificate for the purpose of showing that he has got agricultural lands of Ac.

13.90 cents at Kolamuru village of Bhumavaram Taluk of West Godavari District and doing personal cultivation. There is no serious denial or challenge from the plaintiffs side nor any other material is let in to rebut. However, the plaintiff filed Exs.XI to X4 to show that the firm under the name and style of Reddy Venkat Rao and Co., was assessed to income tax of which the defendant is a partner. Ex.XI is the assessment order for the year 1973-74 i.e., for the accounting year ending with 31-3-1973 wherein the defendant is shown as a partner. Ex.X2 is the assessment order for the year 1974-75 i.e., for the accounting year ending with 31-3-1974 wherein he was shown as partner. Ex.X3 is the assessment order for the year 1975-76 i.e., for the accounting year ending with 31-3-1975 wherein the defendant, his two sons and daughters are shown as partners. Subsequent assessment orders relate only to his sons and daughters for the period upto 1977-78. In his statement as DWI, the defendant had no doubt stated that he paid income tax which was pressed into service very strenuously from the appellant. However, the above assessment orders show that the firm was assessed and the tax was paid accordingly. Excepting the sole statement of DWI, there is nothing on record to show that any assessment was made individually as a partner or tax paid by him as a partner. It is not disputed that there was a tiles factory under the name of Y.V. Naidu Tiles Factory in Ramavaram wherein the defendant is a partner. In fact, in Ex.A6, the defendant himself had requested time for payment of the amount under the suit pronote. DWI also admits in his cross-examination that he got a share in Sitarama Sugar Factory, Ramavaram in an extent of Re.0-20 ps., and he was the managing partner and he submitted the accounts to the income tax and sales tax authorities for some time and he was also a partner in Reddy Venkat Rao and Co., which was assessed to income tax. However, he stated that he did not get any share for the last 12 years. At one stage he denied having any link with Y.V. Naidu Tiles Factory. The Exs.XI and X2 show the varying incomes of the defendant. The contents of Ex.A1 suit pronote states that the loan was obtained for business purpose. Exs. XI to X3 are the documents, which were summoned from the income tax department showing that the defendant was a partner and they relate to (the firm and not that of individual partners).

10. The Andhra Pradesh (Andhra Area) Agriculturists Relief Act, 1938, Act 4 of 1938, a welfare Legislation, was for providing relief to the indebted agriculturists. Section 3(ii) defines an "agriculturist". However, as per proviso "A" therein, a person shall not be deemed as an "agriculturist" if he has been assessed to income tax. The relevant proviso u/s 3(ii) reads as follows:

"Provided that a person shall not be deemed to be an agriculturist if he

(A) has in both the financial years ending 31st March, 1935 been assessed to income tax under the Indian Income Tax Act, 1922 or under the income tax laws of any part of India which immediately before the 1st day of November, 1956 was comprised in a part B State or Foreign Government;

(B).....

(C).....

(D).....".

Similar such exclusion is also extended to those who are assessed to profession tax, property or house tax etc., as per later provisos. Section 3(i) defines "person" as an individual and includes an undivided Hindu family but does not include a body corporate, a charitable or religious institution or an incorporated company or association. Thus, from this definition, a person who has been assessed to tax shall not be deemed to be an agriculturist. And, it excludes a body corporate and also unincorporated company or association. In view of the specific definition as contained in this Act, the definition of "person" under the General Clauses Act which includes any company, association or body of individuals whether incorporated or not does not apply. Necessarily, it follows that juristic entities as contemplated under other laws like companies, societies etc., have no locus.

11. In Vasireddi Pitchayya v. Lavu Subbayya, 1941 (1) ML) 609, a Division Bench of the Madras High Court has held:

"A debt incurred by a partnership is really a debt incurred by the partners for which each of them is liable. And, if a partner, who is by a decree of Court made personally liable for the debt of the firm, is an agriculturist, he is entitled to apply under Sections 19 and 20 of Act IV of 1938 for scaling down."

12. The same Division Bench in another reported decision in K.L.K. Rm. Ramanathan Chettiar, a firm of Bankers carrying on business Vs. Seetharama Aiyar, held:

"It seems to us clear with reference to the definitions in Section 3 of Madras Act IV of 1938 that a firm of moneylenders cannot be an agriculturist. If the application be treated as one by the individual member of the firm, it must fail, for the individual member has been assessed to income tax during the period specified in proviso C to Section 3(3), so that he cannot claim to be an agriculturist".

13. This Court in N. Ranga Reddy v. Firm of T.G.P. Setty, 1970 (2) APLJ 18 while considering the provisions of the said Act held:

"The firm is not a person and will not be considered to be an agriculturist. The firm is not entitled to the benefit of the provisions of the Madras Act IV of 1938. The firm as such cannot ask for scaling down the debt because it does not constitute a person as defined under the Act but the members constituting the firm as partners can ask for such scaling down".

14. However, in that case since there was no evidence as to whether the partner has paid any income tax during the relevant period, the matter was remanded back for fresh enquiry. In Maddukuri Venkatarao and Others Vs. The State of Andhra Pradesh and Another, , a Full Bench of this Court while considering the

provisions of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and the definition of "person" contained therein, held:

"So far as the concept of the individual is concerned, (the Act which relates to agrarian reform, deals with the individual's rights whether he is a member of the family unit or not. For the purpose of imposing the ceiling, the Legislature thought fit to adopt different devices for fixing the ceiling limit with regard to the lands held by the various persons as defined in the Act. It is competent for the Legislature to define a person in the Act and create an artificial unit. The definition of a person in the General Clauses Act, would not restrict the powers of the State Legislature to define "a person" and adopt a meaning different from or in excess of the ordinary acceptance of the word or as defined in the General Clauses Act."

15. In *State of Punjab Vs. Jullunder Vegetables Syndicate*, the Supreme Court has held that a partnership firm is a different legal entity. In *Keshavji Ravji and Co. v. CIT*, : [1990]183ITR1(SC) the Supreme Court held:

"A firm under the general law is not a distinct legal entity and has no legal existence of its own. The partnership property vests in all the partners and in that sense every partner has an interest in assets of the partnership. However, during the subsistence of the partnership, no partner can deal with any portion of the property as his own. There is no relationship of master and servant between a firm on the one hand and its partners on the other. If in substance, interest paid by the firm to a partner and the interest, in turn, received from the partner are mere expressions of the applications of the funds or profits of the partnership and which, having regard to the community of interest of the partners, are mere variations of the method of adjustment of the profits, there should be no impediment in treating them as part of the same transaction, if, otherwise, in general law they admit of being so treated".

16. In *M/s. Mahabir Cold Storage Vs. Commissioner of Income Tax, Patna*, , the Supreme Court held:

"Under the Indian Partnership Act, 1932, the partnership firm registered thereunder is neither a person nor a legal entity, it is merely a collective name for the individual members of the partnership".

17. In *Narayan Bhimji Vadangale and another Vs. Hukumchand Chunilal Thole and another*, , the Supreme Court observed:

"A firm is a name given compendiously to a group of people who comprise its partners, and those people have naturally to be live persons. When a firm is said to be cultivating land, it means that it is the partners of the firm who cultivate the land and in that sense the firm cultivates it personally."

18. In *S.V. Chandra Pandian and Others Vs. S.V. Sivalinga Nadar and Others*, , the Supreme Court held:

"The firm is not a legal entity, it has no legal existence, it is merely a compendious name and hence the partnership property would vest in all the partners of the firm. Regardless of its character, the property brought into stock of the firm or acquired by the firm during its subsistence for the purposes and in the course of the business of the firm shall constitute (he property of the firm unless the contract between the partners provides otherwise. On the dissolution of (he firm, each partner becomes entitled to his share in the profits, if any, after the accounts are settled in accordance with Section 48 of the Partnership Act. In the entire asset of the firm, all the partners have an interest albeit in proportion to their share and the residue, if any, after the settlement of accounts on dissolution would have to be divided among the partners in the same proportion in which they were entitled to a share in the profit. Thus during the subsistence of the partnership, a partner would be entitled to a share in the profits and after its dissolution to a share in the residue, if any, on settlement of accounts."

19. In Ashok Transport Agency Vs. Awadhesh Kumar and Another, , the Supreme Court held :

"A partnership firm differs from a proprietary concern owned by an individual. A partnership is governed by the provisions of the Indian Partnership Act, 1932. Though a partnership is not a juristic person but Order XXX, Rule 1 CPC enables the partners of a partnership firm to sue or to be sued in the name of the firm. A proprietary concern is only the business name in which the proprietor of the business carries on the business."

20. In Mukand Lal Malik Vs. Union of India (UOI) and Others, the Supreme Court while upholding the constitutional validity of Section 182 of the Income Tax Act held that both the firm as well as the partners can be assessed.

21. Therefore, it has to be seen whether the expression "assessee" can include a partner where the firm is assessed and paid the tax but not he. The word "assessed" is not defined under the provisions of the said Act. Necessarily, one has to fall back on the provisions of the relevant tax laws to see as to who constitutes as a person assessed, though under taxation laws both firm and partners arc treated separately for assessment and levy of tax.

22. Section 2(7) of the Income Tax Act defines an "assessee" as follows:

"assessee means a person by whom any tax or any other sum of money is payable under this Act and includes-

(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;

(b) every person who is deemed to be an assessee under any provision of this Act:

(c) every person who is deemed to be an assessee in default under any provision of this Act."

23. From this definition, it follows that an assessee means not only a person who is actually assessed by the department under the said Act but also includes persons who have assessable income though not actually assessed. It is relevant to note that till the year 1992-93, the partners were also liable for assessment even though the firm is assessed on the respective shares of the partners but later on, the partners were exempted from taxation, if the registered firm is assessed. However, as regards the unregistered firm, it was only the firm which is assessable to tax and the partners were exempted from the beginning in view of the fact that the tax in respect of a unregistered firm was at a higher rate. With this backdrop under relevant tax laws and by taking into account that the firm is not a legal entity and Act 4 of 1938 being a socio beneficial Legislation, the objects and the purposes thereunder have to be kept in view while interpreting these provisions. The intention of the Legislature is to give benefit to agriculturists and exclude persons having any other source or income. It thus, necessarily follows that he should be exclusively an agriculturist doing personal cultivation for his livelihood. Once he ventures in to any other vocation, he loses its benefit. Accordingly, the assessment contemplates an income other than that of agriculture. It is a well settled canon of construction that in construing the provisions of such enactments, the Court should adopt that construction which advances, fulfils and furthers the object of the Act rather than the one which would defeat the same and render the protection illusory. It cannot be said that a partner, though not assessed or paid any tax as such cannot totally detink himself from the assessment made on and the tax paid by the firm. Firm cannot exist without partners. Ultimately, it is the partner's involvement, activity and the income thereon which makes the firm one liable for the assessment or payment of tax and it is the partners who receive their due respective shares of income. Though there is nothing on record in this case to show whether the firm was a registered one or not, but the fact remains that the firm was assessed and the defendant had received the amounts which are assessable to tax during the relevant assessment years. If it were to be an unregistered firm, the defendant ought not to have been assessed though he received the income which is otherwise taxable. But, however, he cannot seek the benefits under the provisions of Act 4 of 1938 since the firm or such class of persons are totally excluded from the definition. Even otherwise, if the firm is a registered one, the defendant who had taxable income during the relevant assessment years as well cannot seek any benefit or relief under the said Act in view of the definition as contained in Section 2(7) of the Income Tax Act. The decision relied on earlier in N. Ranga Reddy's case (supra) cannot be of any assistance to the defendant herein as the question involved was as to whether a firm itself falls within the definition of agriculturist and as there was no evidence whether the defendants therein had paid any tax, the matter had to be remanded for finding out whether they paid the tax. The aspect as to whether a partner can be a deemed assessee

and has a role in the income of the firm and the tax paid thereon, did not crop up for consideration.

24. In view of the aforesaid reasons, it has to be held that the partner cannot escape his direct concern with the assessment or the tax paid by the firm. Accordingly, it has to be held that even though the firm is assessed and paid tax, the partner will be a deemed assessee and thus he is not entitled to the benefits under Act 4 of 1938.

25. In the above circumstances, the appeal is allowed and there shall be a decree as prayed for. However, in the circumstances, there shall be no order as to costs.

26. Before parting with the case, this Court places on record its appreciation for the able assistance rendered by Sri V. Bhaskar Reddy, Counsel, who has been appointed as an amicus curiae.