(1986) 11 MAD CK 0013

In the Madras High Court

Case No : O.S.A. No. 131 of 1978

S. Aiyadurai Nadar APPELLANT

Vs

T.R. Sakku Bai and Others RESPONDENT

Date of Decision : 13-11-1986

Acts Referred:
Income Tax Act, 1961 — Rule 2, 51

Citation : (1987) 66 CTR 234 : (1987) 168 ITR 161 : (1987) 30 TAXMAN 243

Hon'ble Judges : V. Ratnam, J;V. Ramaswami-II, J

Bench : Division Bench

Advocate : N.S. Varadachari, for the Appellant; N.V. Balasubramanian, for the Respondent

Judgement

V. Ramaswami, J.—This appeal has been filed against the order in Application No. 2736 of 1978. The said application was filed by the

plaintiff in C. S. No. 10 of 1977 for declaration that the attachment effected by the Income Tax Officer as per his letter No. T.R. 6694 of 1971-72

and 492 of 1977-78 dated April 22, 1978, of the monies standing to the credit of the suit as invalid and not binding on the applicant. The appellant

is the plaintiff in C. S. No. 10 of 1977. That was a suit filed by him for a decree against three defendants for the recovery of a sum of Rs. 2,70,000

with interest from the date of the plaint. The money was advanced to the first defendant and the second and third defendants are the sureties. The

suit was decreed on February 15, 1977. In execution of this decree in E. P. No. 38 of 1977, the appellant attached the right, title and interest of

the defendants in a picture titled ""Ennaippol Oruvan"". That picture was produced by a firm of producers called Sir Vinayaka Pictures. The partners

of Sir Vinayaka Pictures are the same as those of R. R. Pictures, the second defendant in the suit.

2. It appears that Sri Vinyaka Pictures are in arrears of Income Tax of Rs. 4,36,692 up to December, 1977, and R.R. Pictures are in arrears of

Income Tax to the extent of Rs. 15,80,400 up the end of 1977. On a certificate being received from the Department, the Tax Recovery officer

issued a notice to both Sri Vinayaka Pictures and R. R. Pictures under rule 2 of the Second Schedule to the Income Tax Act 1961. It appears that

some of the creditors of R. R. Pictures also made claims in respect of the proceeds of Sri Vinyaka Pictures. In the execution proceedings, in

Applications Nos. 3564, 3568, 3591 and 3592 of 1977, M/s. Gemini Pictures Circuit Ltd. and Mr. V. Veeraraghavan were appointed as joint

receivers in respect of the picture Ennaippol Oruvan with a direction to the receivers to deposit all the moneys received by them to the credit of

C.S. No. 10 of 1977. The amounts realised by the distribution and exhibition of the picture are deposited to the credit of C.S. No. 10 of 1977.

The prayer in Application No.2736 of 1978 in effect was for appropriating the entire money towards the decree in C.S. No. 10 of 1977. But the

Income Tax Department claimed payment of this money on a priority basis on the ground that Income Tax arrears are Government debts.

3. The effect of the issue of the notice under rule 2 of the Second Schedule to the Income Tax Act is dealt with under rule 16 of that Schedule.

That rule provides that where a notice has been served on a defaulter under rule 2, the defaulter or his representative-in-interest shall not be

competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery

officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money. Rule 51 also provides

that where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the

notice to pay the arrears issued under this Schedule was served upon the defaulter. In view of these rules, the decree in C. S. No. 10 of 1977 itself

could not be executed against Ennaippol Oruvan or against the monies realised towards the decree amount even by an order of court. It is also

well settled that in respect of Income Tax arrears, it was not necessary for the Department to file a suit and get a decree in order to proceed against the properties of the assessee and that even if certain monies are available in court deposit, the Department can file an application for

payment out. In the circumstances, therefore, neither the fact that the appellant had obtained a decree nor the fact that he had obtained an order of

attachment as early as on April 24, 1977, would make any difference. It is also seen from the records that rule 2, notice was served on the

defaulter assessee even before the suit was filed by the appellant and, therefore, the claim of the Income Tax Department could not be resisted.

That was the view taken by the learned single judge who decided Application No. 2736 of 1978 and, therefore, no interference is called for.

However, we may mention that the recovery proceedings in respect of the dues from R.R. Pictures against the amount now in court deposit to the

credit of C.S. No. 10 of 1977 have been rejected by the learned single judge and that has not been appealed against by the Department and,

therefore, the Department whole be entitled to recover only the amount due from Sri Vinayaka Pictures from the amount standing to the credit of

C.S. No. 10 of 1977. It is made clear that if any amount is left out after payment of the Income Tax errors due from Sri Vinayaka Pictures, the

apportionment of the money among the various creditors will have to be the subject-matter of a separate order on the applications made by the

various creditors before the learned single judge in execution proceedings.

4. In the result the appeal fails and is dismissed. There will, however, be no order as to costs in this appeal.

