
(1968) 02 AP CK 0006
In the Andhra Pradesh High Court
Case No : Appeal No. 194 of 1962

Satyam

APPELLANT

Vs

Krishna Murthy and Others

RESPONDENT

Date of Decision : 02-02-1968

Acts Referred:

Income Tax Act, 1922 — Section 46(2)

Citation : AIR 1969 AP 237

Hon'ble Judges : Venkatesam, J

Bench : Single Bench

Advocate : G. Balaparameswari Rao and P. Kameswara Rao, for the Appellant;
Advocate General and Venkateswarlu, for the Respondent

Judgement

1. This is an appeal preferred by Mattapalli Satyam, the 11th defendant against the decree and judgment of the learned Subordinate Judge, Visakhapatnam in O. S. No. 60/61 on his file.

2. The point in controversy is very simple and it is not necessary to state the facts in any detail. The 1st defendant is the father of defendants 2 and 5. Defendants 3 and 4 are the sons of the 2nd defendant. The 1st defendant for himself and as guardian for the 5th Defendant. and the 2nd defendant executed a registered sample mortgage bond dated 23-6-1952 in favour of the plaintiffs agreeing to repay the same with interest at 5 1/3 percent per annum. Defendants 3 and 4 were the sons born subsequently to the 2nd defendant. The 1st defendant belongs to a family, the suit properties were brought to sale by the Revenue Authorities on 22-10-1953. They were purchased by one Dasari Ayodhya Ramayya, and his legal representatives are defendants 6 to 9. Defendants 6 to 9 in their turn alienated the portions of the suit properties to defendants 11 to 17. The 11th defendant who is the appellant in this appeal purchased item 1 of the suit property from defendants 6 to 9 under a registered sale deed dated 29-3-1958 for Rs. 19,500. As the mortgagors debt the present suit was filed by the mortgagee.

3. Defendants 1 to 6, 9, 13, 15 and 16 remained ex parte and the suit was resisted by the other defendants. The 11th defendant contended that he was not aware of the suit mortgage bond, or the consideration thereunder. It is averted that the plaintiffs were aware of the sale of the suit properties for recovery of the sales-tax and that the said sale is not subject to the liability under suit mortgage. He alleged that the 1st defendant Suryanarayanmurthy, Kamaraju, Paparao, Satyanarayanamurthi, and Anjaneyamurthi were five brothers who became indebted to the Government in large sums of money towards Income Tax and sales-tax. For the recovery of those amounts proceedings were taken under the Revenue Recovery Act and Item I of the plaint schedule an upstairs house of Viskhapatnam was sold at a Revenue sale. It was purchased by one Dasari Ayodhya Ramayya on 22-10-1953 and a sale certificate was issued by the District Collector to him, The 11th defendant purchased that house from defendants 6 to 9 and 10 under the registered sale deed dated 29-3-58 for Rs. 19,500 and has been in possession and enjoyment of the same in his own right. He would have it that his title is free of all charges and encumbrances including the suit mortgage. The plaintiffs are therefore not entitled to bring to sell that property for discharging the mortgage debt.

4. The learned Subordinate Judge framed appropriate issues and found all of them against the defendants and in favour of the plaintiff, and granted decree for sale of all the mortgaged properties including Item I as prayed for.

5. The issues relevant to the contention of the 11th defendant are issues No. 2 and the additional Issue No. 1. On those issues, the Subordinate Judge held that the revenue sale was admittedly subsequent to the suit mortgage, and that the doctrine of Priority of Crown Debts against unsecured creditors would not apply to a case where property is sold for moneys other than the land revenue due to the Government. Inasmuch as the revenue sale in the instant case was for recovery of Income Tax and sales-tax he held that the sale would not have priority over the mortgage debt. Accordingly it was found that the title of the 11th defendant was not free of the suit mortgage debt.

6. Aggrieved by this decision, the 11th defendant has preferred this appeal. Sri Parameswara Rao, the learned counsel for the appellant made two submissions. Firstly that no reasonable opportunity had been given to the 11th defendant to establish the Revenue Sale and secondly that inasmuch as this revenue sale was for recovery of arrears of Income Tax which accrued prior to the date of the mortgage, the revenue sale should have priority over the mortgage.

7. I will now consider the validity of these contentions. The suit was filed on 19-6-1961. The 11th defendant as well as other defendants were all served on 26-7-61. The Court declared the 11th defendant ex parte as he did not appear in person or by counsel. The other contesting defendants filed written statements on 4-8-1961. Issues were framed on 8-8-1961 and time was granted for one week to file documents and it was posted for trial to 19-8-1961. Meanwhile the 11th defendant appears to have filed a petition for setting aside the order

declaring him ex parte. and that was ordered. He filed the written statement on 19-8-1961. At his instance additional issues were framed on 21-8-61 and it was posted for trial to 29-8-1961. He wanted an adjournment on that day, and the suit was adjourned to 30-8-1961. On that day the evidence was recorded and arguments were heard and judgment was pronounced on 31-9-1961. The argument of the Leonard counsel is that the written statement having been filed on 19-8-1961 hardly gave his client sufficient opportunity to adduce the necessary evidence. It can hardly be denied that litigants should be given every reasonable opportunity to present their case and adduce all available oral and documentary evidence. But in deciding this question, one should have regard to the contentions put forward in the written statement and also the grounds on which an adjournment was prayed for, and if by reason of the refusal of adjournment, he was really prevented from placing before the Court any tenable plea. That is not the case here. Even though the suit was disposed of more than six years ago even now no material has been placed before this Court to satisfy it that if an opportunity was given any evidence would have been placed before the Court in support of his evidence.

8. As already stated in the written statement the only contention raised was that the Revenue sale conferred an absolute title free from all prior encumbrances. It was not suggested that the arrears of Income Tax and sales-tax for recovery of which the sale was held, accrued prior to the date of the mortgage, or that an attachment was made of Item 1 prior to the execution of the mortgage bond. It is not known on what ground the adjournment was asked for on 29-8-1961. The written statement raised only a question of law, and the learned Subordinate Judge considered it. AS the record stands it cannot be said that the Subordinate Judge when he proceeded to trial on 30-8-1961, denied any opportunity to the 11th defendant to adduce oral or documentary evidence. It is very significant to note that the 11th defendant had not even examined himself. The learned Subordinate Judge therefore decided the suit after hearing the legal contentions advanced on behalf of the 11th defendant.

9. In this Court, the appellant has filed C. M. P. No. 9392/67 for receiving a certified copy of a letter dated 7-12-1951 by the Income Tax Officer, Vizianagaram to the Collector, Visakhapatnam u/s 46(2) of the Indian Income Tax Act, 1922. In this letter the Income Tax officer certified that a sum of Rs. 4,885-9-0 due from Motumarri Suryanarayana , the 1st defendant mortgagor was in arrears, and that the same may be recovered as if they were arrears of land revenue u/s 46(2) of that Act. In the affidavit filed for receiving this document, it is alleged that he wanted the subordinate Judge to grant reasonable time to substantiate his contention by producing the necessary documents from the Income Tax Officer, Visakhapatnam and the District Collector, Visakhapatnam but it was refused and the suit was disposed of on 1-8-1961 . He had not alleged for what documents he wanted the adjournment. That is not all, In paragraph 6 of the affidavit he stated that after the suit was disposed of , he made an enquiry in the concerned departments of Income Tax and revenue departments regarding

the availability of the letter dated 7-12-1951 now filed as additional evidence. He stated he was diligent but succeeded in getting it only in January 1967. He also averred that he had a mild heart attack in 1966 and was advised to take rest, evidently to explain the delay in filing this petition for receiving it as additional evidence. He stated that the said document is very important and relevant to substantiate his contention and may be received.

10. It is thus clear that even in this petition now filed it is not his case, that besides this letter dated 17-12-1951 there were other documents to establish his case, which he would have produced if the suit was adjourned or that even after it was disposed of, he applied for any or all of those documents or that the concerned officials had refused to supply certified copies of the same, or how they would substantiate his contentions.

11. Thus the only grievance of the appellant is that this letter dated 7-12-51 could not be filed by reason of an adjournment not being granted and I will presently consider how this letter even if received would not advance his case further. According to the 11th defendant, even now there is no other evidence which he was precluded from placing before the Court then or now, To call for a revised finding after giving an opportunity to adduce additional evidence in these circumstances, would serve no useful purpose. I cannot therefore hold that the refusal of the Subordinate Judge to adjourn the suit beyond 30-8-1961 resulted in any prejudice to the appellant or prevented him from adducing any useful evidence.

12. I shall now advert to the main contention, The argument of the learned counsel is that if Income Tax fall into arrears or accrued prior to the date of a mortgage and a sale is held for the recovery of such arrears of Income Tax though it be after the mortgage that sale should prevail over the mortgage. In other words, the priority given to Crown debts over other unsecured debts will prevail even against a secured debt if the arrears of Income Tax accrued prior to the mortgage. For this argument the learned counsel relied on Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, . In that case as would appear from the facts extracted in the judgment, the only question for consideration was whether a simple money decree-holder could claim priority over the arrears of Income Tax because he obtained an attachment of certain moneys due to the judgment debtor before the Income Tax department took any steps. The subordinate Judge's Court held that there was no priority in favour of the department but that was set aside by the High Court the decision of the High Court was confirmed by the Supreme Court. Gajendragadkar, C. J. speaking for the Court held that the provisions of Section 46 of the Income Tax Act were construed frequently in our country and the consensus of judicial opinion was that the arrears of tax due to the State can claim priority over private debts. It was also held that Section 46(2) of the Income Tax Act did not deal with the doctrine of the priority of Crown debts at all but merely provided for recovery of arrears of

tax due from an assessee as if it were arrears of land revenue and that provision could not be said to covert arrears of tax into arrears of land revenue either and that all that it purports to do was to indicate that after receiving the certificates from the Income Tax officer, the Collector has to proceed to recover the arrears as if they were arrears of land revenue. It may be noted that before the Supreme Court the question now for decision before me did not at all arise viz., whether and, if so, in what circumstances a revenue sale for recovery of arrears of Income Tax held subsequent to a mortgage could claim priority over the mortgage? The learned Chief Justice in that case approved of the decisions of the Madras High Court in *MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA.*, ; *Bank of India Vs. John Bowman and Others*, ; *Kaka Mohamed Ghouse Sahib and Co. Vs. United Commercial Syndicate And Others.*, , for the general proposition that in India Courts have consistently recognised that arrears of tax due to a State can claim priority over private debts. His Lordship expressly disapproved that a note of dissent struck in *Ramachandra v. Pitchaikanni* (1884) 7 Mad 434, that the doctrine that Crown debts would have priority, would not universally be applicable. In *MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA.*, the Full Bench held that the Crown has the right of priority in payment of debts due to it over all unsecured creditors and that where in execution of a money decree against a debtor his property is sold and arrears of Income Tax are due by the debtor, the Crown has priority in respect of this debt and the Court has inherent power under S. 151, Civil P.C., to order the payment of the Crown debt to the Government on the mere application of the Income Tax Officer without having to file a suit. It was also held that an attachment by an unsecured creditor does not confer title not make him a secured creditor.

13. The argument which was considered and rejected by Leach, C. J. in the Full Bench decision is expressed at p. 363 thus:

"The learned Advocate for the petitioner then contends that as a private person cannot enforce payment without first obtaining a decree, the Crown is in the same position. The argument is that a private person is governed by the provisions of the C. P. C. and as there is nothing in ht code which places the Crown in a different position. the procedure there contemplated must be followed. I am unable to agree. This argument ignores to special position of the Crown, the special circumstances and the Court's inherent powers. It cannot be denied that the Crown had the right of priority in payment of debts due to it. It is a right which has always existed and has been repeatedly recognised in India. If the Crown is entitled as it is, to prior payment over all unsecured, the position of secured creditors does not arise. I see no reason why the Crown should not be allowed to apply to the Court for an order directing its debt to be paid out of moneys in Court belonging to the debtor, without having to file a suit. Of course it must be a debt which is not disputed or is indisputable. In this case the debt represents money due to the Crown under the Income Tax Act and the demand of the Income Tax Officer is not open to question.....

The right to payment being indisputable justice requires that it should be paid out to the Crown and formal application for payment has been made. It seems to me that both right and convenience demand that the Court should exercise its inherent powers."

14. It may, therefore, be noted that the Full Bench expressly stated that they were considering only the question of priority of the Crown debts over unsecured creditors but not secured creditors.

15. Gajendragadkar, C. J., summed up the effect of this decision in Builders Supply Corporation Vs. The Union of India (UOI) Represented by the Commissioner of Income Tax, West Bengal and Others, thus:

"In MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA., , a Full Bench of the Madras High Court has held that the Income Tax debt has priority over private debts and that the Court had inherent power to make an order on the application for payment of moneys due to the Crown. In that connection, the Court held that Section 46 of the Income Tax Act is not exhaustive of the remedies of the Crown to cover arrears of Income Tax and does not preclude an application of this nature. The Court further held that it was also not necessary for the Crown to obtain a decree against the assessee or to effect an attachment before making such an application. The application in question had been made under S. 151 of the Code."

The learned counsel for the appellant presses this passage in support of his contention that if it is established that the arrears of Income Tax were in fact due prior to the date of the mortgage the Crown debt would have priority, even if the sale for the recovery of the Crown debt was held after the mortgage. But there is a big jump in the argument as in MANICKAM CHETTIAR Vs. Income Tax OFFICER, MADURA., the priority of Crown debt over a secured creditor was not considered. I am unable to accept the effect which the learned counsel attributes to the aforesaid passage in the judgment of Gajendragadkar, C. J.

16. On the other hand, that a secure creditor would have priority over a purchaser at a revenue sale held subsequently for recovery of arrears of Income Tax has been well established. In Kadir Mohideen Marakayar v. N. V. Muthukrishna Ayyar ILR (1902) Mad 230 it was held that the effect of Section 30 of the Income Tax Act of 1886 corresponding to Section 46 (2) of the Income Tax Act, 1922, is not to convert Income Tax into an arrear of land revenue, but merely to extend the procedure prescribed by the Revenue Recovery Act to the recovery of arrears of Income Tax their Lordships followed the decision reported in ILR (1884) Mad 434 relating to a sale under the Revenue Recovery Act for recovery of arrears of abkari revenue and the reasoning on which the decision proceeded. In that case the question for consideration was whether under the revenue sale., the share of the assessee would pass to the purchaser of the assessee would pass to the purchaser free of the mortgage encumbrances as if the Income Tax due from him was revenue which accrued due in respect of the

land forming his share in the mortgaged property. in which case u/s 2 of Act II of 1864 (Revenue Recovery Act) it forms the security for the public revenue and that question was answered in the negative holding that the arrears of income tax had not the effect of converting the Income Tax into arrears of land revenue. In *Chinnammal Achi Vs. Chena Muna Saithakkathi Rowther and Others*, certain land was attached and sold under the provisions of the Revenue Recovery Act for arrears of Income Tax but prior to it the property was sold by the official receiver and it was purchased by the other person. It was held that the revenue sale for the recovery of arrears of Income Tax would not give a higher title to the purchaser than the owner of the land himself would have given if he had alienated the property privately when the sale was for the enforcement of other dues such as the Income Tax. His Lordship Madhavan Nair J. held at p. 883 thus:

"It is only if the sale is for land revenue that the purchaser gets a preferential title free from all incumbrances. Such a priority does not attach itself to a sale for the enforcement of other dues even if the sale is held under the provisions of the Revenue Recovery Act."

It was accordingly held that since the title to the property so far as the appellant (defendant) was concerned accrued only on 9th November, 1928, i.e., subsequent to the sale by the official receiver, the title which the plaintiff obtained from the official receiver should have priority to the claims of the defendant, though the property was attached as early as in 1924.

17. In *The Secretary of State for India in Council Vs. Sait Jodaraj Dhupajee (died) and Others*, , Somayya, J., had to consider the effect of a sale for recovery of penal assessment under Madras Land Encroachment Act 3 of 1905. His Lordship held that Sec. 9 of the Act. equates the penal assessment levied under it to land revenue and provides that it may be recovered as land revenue and that the sale of the defaulter's property for recovery of such assessment passed the property free of all encumbrances as Sec. 42 of the Madras Revenue Recovery Act 2 of 1864 applied to the sale.

18. The distinction, therefore, to be borne in mind is whether the revenue sale is for recovery of land revenue itself, or for recovery of a sum of money which by any particular statute is equated to land revenue. When that is not the case but a statute simply enables sums due to the Government to be recovered as if they are arrears of land revenue, as if they are arrears of land revenue, i.e., by resorting to the procedure under the Madras Revenue Recovery Act, the sale under that Act would not confer a title free of encumbrances. In the case of sales held for recovery of arrears of Income Tax, his Lordship Somayya, J., clearly held that revenue sales for recovery of Income Tax would not pass a title free of encumbrances and followed the decisions in ILR (1902) Mad 230 and ILR (1884) Mad 434.

19. Having regard to the strong line of authority I hold that the sale in the instant case for recovery of arrears of Income Tax subsequent to the mortgage

did not have the effect of superseding the rights of the mortgagee nor giving him any priority over the rights of the mortgagee.

20. In this view the document now sought to be filed as an additional evidence, even if it is received, would not advance the case of the 11th defendant as it only indicates that a sum of Rs. 4,885-8-0 was due from the first defendant. There is no evidence on record that the sum for recovery of which the sale was held included this particular amount. Even assuming it to be so, it does not mean that the sale admittedly subsequent to the mortgage gave any priority over the mortgagees.

21. For all these reasons, I agree with the decisions of the Court below that the 11th defendant had not acquired title free of the suit mortgage in respect of item No. 1. No other point has been argued before me.

22. In the result the appeal fails and is dismissed with costs.

23. Appeal dismissed.