(2009) 01 AHC CK 0029

In the Allahabad High Court

Smt. Malti Devi APPELLANT

Vs

Tax Recovery Officer and Another RESPONDENT

Date of Decision : 09-01-2009

Acts Referred:

Citation : (2009) 225 CTR 334 : (2009) 314 ITR 7

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—The present writ petition is directed against the order dated September 22, 2006, passed by the Commissioner of Income Tax, Allahabad, dismissing the appeal filed by the petitioner.

2. It is not in dispute that M/s. Raja Ram Kishan Chand (HUF) was a defaulter of Income Tax dues. In recovery of the said dues, the Department attached property No. 110, Ward-7, Mohalla Pakki Sarai, Mirzapur. The attachment was effected on November 7, 1973. The petitioner who happens to be the daughter-in-law of Raja Ram allegedly purchased the property No. 107, Ward-7, Mohalla Pakki Sarai, Mirzapur, for a sum of Rs. 9,000 on September 22, 1980. She came out with the case that the said property No. 107 was not the subject-matter of attachment order dated November 7, 1973. The case of the Department, on the other hand, was that the property No. 107 was also the subject-matter of the attachment order dated November 7, 1973, and as such, any subsequent sale to her is void and illegal. It further appears that an objection was filed by the present petitioner, namely, Smt. Malti Devi before the Tax Recovery Officer on the ground that she is a bona fide purchaser of the property in question prior to the attachment order and also that the property in question belongs to Shri Raja Ram in his individual capacity and the said property cannot be sold for the recovery of dues outstanding against M/s. Raja Ram Kishan Chand (HUF). Shri Raja Ram also filed certain objections claiming the property in question as his individual property. The Tax Recovery Officer rejected the objection. In view of

Rule 11(6) of the rules as provided in the Second Schedule to the Income Tax Act, Smt. Malti Devi, the petitioner herein, instituted Suit No. 157 of 1983 challenging the order passed by the Tax Recovery Officer holding that the property in question was attached by the order dated November 7, 1973. Shri Suyash Agrawal, advocate, learned Counsel for the petitioner, further accepts the position that the said suit was dismissed and the dismissal of the suit has been upheld up to thsi Court. Thereafter, it appears that an appeal was preferred before the Commissioner of Income Tax, Allahabad. The said appeal was earlier dismissed in default and review application was filed, which also was dismissed. Thereafter, the petitioner preferred a writ petition in this Court being Writ Petition No. 1033 of 2002. This Court by the judgment dated May 25, 2006, directed the Commissioner of Income Tax to decide the objection filed by the petitioner on the merits. In compliance with the aforesaid order, the matter was again placed before the Commissioner of Income Tax who after giving an opportunity of hearing to the petitioner, passed the impugned order dismissing the appeal.

3. Shri Suyash Agrawal, the learned Counsel for the petitioner, submits that in view of the order passed by this Court in the aforesaid writ petition, it was incumbent upon the Commissioner of Income Tax to have also considered the validity of the order of the Tax Recovery Officer holding that the property in question stood attached in pursuance of the order dated November 7, 1973. Elaborating the argument, it was submitted that the Commissioner of Income Tax has misinterpreted and misconstrued the judgment of thsi Court. Shri Shambhu Nath Chopra, the learned Counsel for the Department, on the other hand, supports the impugned order.

4. Considered the respective submissions of the learned Counsel for the parties and perused the record.

5. The writ petition is liable to be dismissed on the short ground that the property in question has been auction sold, as admitted by Shri Suyash Agrawal during the course of the argument, to Shri Kapoor Chand on August 20, 1985. In other words, Shri Kapoor Chand has purchased the property in question and his interest has been created therein. Shri Kapoor Chand has not been impleaded as a party in the present writ petition and as such, in his absence the present writ petition is not maintainable.

6. Secondly, there is concealment of material fact in the present writ petition. The petitioner who happens to be the daughter-in-law of Shri Raja Ram has not intentionally annexed the judgments of the civil court and of this Court holding the attachment order dated November 7, 1973, as valid. The only explanation given by the learned Counsel for the petitioner is that it was not considered by her to be a document material for the decision of the present writ petition. The said explanation is wholly inadequate and is not acceptable. Evidence must have been led before the civil court by the respective parties and the civil court has decided the case on the merits after due consideration of the evidence and upheld the attachment order, which was challenged in appeal before the

Commissioner of Income Tax. The order passed in Suit No. 157 of 1983, has been confirmed by thsi Court. Definitely, the said order is relevant and material to the controversy involved herein.

7. Even otherwise also, I do not find any error in the impugned order. The Commissioner of Income Tax has rightly referred Sub-rule (6) of rule 11 of Part I of the Second Schedule to the Income Tax Act, which provides that any claim or objection preferred by a party may institute a suit in a civil court to establish the right which he claims to the property in question. The said rule further provides that the order of the Tax Recovery Officer is conclusive subject to the result of the suit. For the sake of convenience the said rule is reproduced below:

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

8. This being the legal position, the Commissioner of Income Tax has rightly held that the order of the Tax Recovery Officer holding that the property in question stood attached in pursuance of the attachment order dated November 7, 1973, is conclusive and binding, which was also approved by the civil court.

9. It is not necessary for this Court to dwell with the matter in detail, as the Commissioner of Income Tax has gone into the matter in depth and has rightly taken into consideration the entire aspect of the case. The present litigation appears to be a proxy litigation on behalf of Shri Raja Ram, the father-in-law of the petitioner who happens to be defaulter.

10. The writ petitions dismissed summarily with cost of Rs. 3,000 (rupees three thousand only).