(1961) 08 KL CK 0005

In the High Court Of Kerala

Case No : C.R.P. No. 690 of 1960

Srinivasa Pillai — APPELLANT

Vs

District Collector, Trivandrum and Another — RESPONDENT

Date of Decision : 03-08-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Income Tax Act, 1961 — Section 46, 46(2), 46(5)(A)
Revenue Recovery Act, 1890 — Section 5

Citation : (1961) KLJ 840

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Advocate : K.S. Paripoornan, for the Appellant; Government Pleader For 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

Mr. Justice P. Govinda Menon, J.—The judgment-debtor in C. M. P. 97/60 in O. S. 87/54 on the file of the District Court of Trivandrum is the revision petitioner. He owed some money to the 2nd respondent. The 2nd respondent had to pay large sums of money to the Central Government by way of arrears of income tax. The income tax Officer issued a notice to the petitioner u/s 46(5)(A) of the Indian income tax Act calling upon him to pay the amount to him. In the meanwhile the 2nd respondent filed a suit against the petitioner and obtained a decree. Section 46(5)(A) provides that if the person to whom notice had been issued fails to pay, further proceedings may be taken by and before the Collector on the footing that the notice has the same effect as an attachment by the Collector under the Proviso to Sub-section 2 to Section 46. The income tax Officer on the strength of this attachment filed an execution petition praying that he may be impleaded as an additional decree-holder. The petition was dismissed on the ground that proceedings subsequent to the notice u/s 46(5)(A) has to be taken by or before the Collector.

2. Acting under the provisions of Section 46(2) the income tax Officer forwarded a certificate to the Collector specifying the amount of arrears due from the decree-holder for taking steps to recover the amount. The Collector thereafter filed a petition to implead him as an additional decree-holder. The judgment-debtor opposed the grant of the petition on the ground that it was not open to the Collector to apply to a Civil Court for execution when there had been no decree making the assessee liable for the amount of tax. The learned Additional District Judge over-ruled the objection and directed execution to proceed. The revision is against the aforesaid order.

3. The question is whether the Collector can get himself impleaded as an additional decree-holder and execute the decree. A decree-holder may attach a decree obtained by his judgment-debtor. The attachment can be affected by the court by issuing a notice to the court which passed the decree sought to be attached requesting that court to stay the execution. The holder of a decree sought to be executed is deemed to be the representative of the holder of the attached decree, and in that capacity he is entitled to execute the attached decree.

4. The Collector, on receipt of a certificate from the income tax Officer specifying the amount due from the assessee is empowered u/s 46 of the Indian income tax Act proceed to recover the said amount as if it were an arrear of land revenue. For the purpose of recovering the said amount he will have the same powers which a civil court has for the purpose of recovery of an amount due under a decree. The Collector, therefore, under the said provisions can attach the decree obtained by the assessee.

5. The Collector''s right to recover the amount is, therefore, conditioned by the provisions of the Revenue Recovery Act prescribing the mode for the collection of arrears of land revenue. There is no provision in the Revenue Recovery Act empowering the Collector to file an application for the execution of a decree obtained by the assessee against a third party. u/s 5 of the Revenue Recovery Act whenever revenue may be in arrear, the Collector can recover the amount by the sale of the defaulter''s moveable and immovable property or by execution against the person of the defaulter in manner therein provided. The Collector therefore can either sell the defaulter''s moveable or immovable property or recover the amount by execution against the person of the defaulter. There is no provision enabling the Collector to recover the amount due from the assessee by executing a decree obtained by him. The power conferred on the Collector u/s 46(2) is limited and circumscribed and it does not give him the right to apply for executing the attached decree.

6. Nor is such a right conferred under the proviso to Section 46(2). Under that proviso, the Collector has, for the purpose of recovering the amount due from the assessee, the power which, under the Code of Civil Procedure, a civil court has for the purpose of recovering the amount due under a decree. His powers are equated to that of a civil court. It cannot be said that a civil court attaching

the decree of another court can itself file an application for executing the decree of that court. Under O. 21 , R. 53 only the holder of the decree sought to be executed is deemed to be the representative of the holder of the attached decree. In no sense of the term can a civil court attaching a decree be the holder of the decree within the meaning of the said clause. So there can be no doubt that the Collector has no right to file an execution application.

7. This question whether the Collector can get himself impleaded as an additional decree-holder and execute the decree had come up for consideration in the Andhra High Court in Virina Soorayya Vs. Virina Mallayya and Others, where Subba Rao C. J., after an exhaustive discussion of the case law held:

Though S. 46(2) of the Indian income tax Act empowers a Collector to whom a certificate under that section has been sent by an income tax Officer to attach a decree held by the assessee against a third party, the Collector is not entitled to apply for execution of that decree against the judgment debtor. Consequently an application by the Collector for execution of the decree which he has attached would not save a subsequent application for execution from limitation under Article 182 of the Limitation Act.

8. The same view was taken by the Madras High Court in a recent case in Bibijan Alias Karimunnissa BI and Another Vs. Collector of North Arcot, Vellore, and Others, .

9. The learned Government Pleader would argue that as the amount of arrears mentioned an the certificate issued by the income tax Officer could be collected by the Collector, who has powers under the Code of Civil Procedure, it would be open to him to apply for execution of the assessment order in the Civil Court as if it were a decree of that court.

Reliance was placed upon the Full Bench decision of the Madras High Court in Manickam Chettiar v. income tax Officer, Madura (I. L. R 1938 Mad. 744). This decision was considered in the cases mentioned above.

10. In that case the petitioner obtained a money decree against the respondent and in execution attached and brought to sale some moveable properties of the respondent. The respondent owed money to the Government and the income tax Officer applied to the executing court u/s 151 C. P. C. for an order directing payment out to him from the sale proceeds. After reserving the amount required for the costs of execution, the executing court ordered the balance to be paid out to the Income tax Officer. The Full Bench held that Section 46 of the Indian income tax Act, 1922 was not a bar to the application made by the income tax Officer and that the executing court had power to order the payment to the Government. According to the decision, the Crown, being entitled to prior payment over all unsecured creditors, can file an application u/s 151 of the Civil Procedure Code, for the payment of the dues out of the sale proceeds in Court realized in execution of a decree. But the Full Bench does not lay down that the Crown can file an application for the execution of decrees obtained by third

parties for the purpose of realizing its dues. The decision does not, therefore, really help the Government Pleader.

11. Similarly the case in Pamalal Jagannath v. Collector of Mandalay (I.L.R. 8 Rang. 294) is also not of any assistance. In that case an application to file an appeal in forma pauperis was dismissed and the appellant was directed in the decree to pay Government the sum of Rs. 700/- towards court fee. As default was made the Collector applied to the District Judge to reserve the amount from out of the sale proceeds in execution. In such a case court fee becomes payable under the decree itself and the collector in so far as there was a decree in favor of the Government for court fees was held to be the holder of the decree and therefore was entitled to execute the decree. In this case there was no decree in favor of the Collector, but he only acted as a court for the purpose of attaching the decree. The collector not being the holder of the decree was not in law entitled to file an execution application for the execution of the decree attached. It follows that the petition filed by him to execute the attached decree is not one made in accordance with law and it has to be dismissed. The order of the learned District Judge cannot, therefore, be supported. The revision petition is allowed and the order of the learned District Judge is set aside. There will be no order as to costs.