(2011) 06 MP CK 0035

In the Madhya Pradesh High Court

Case No : F.A. No. 250 of 1994

State of M.P. and Another — APPELLANT

Vs

Smt. Zubeda Bano and Another — RESPONDENT

Date of Decision : 28-06-2011

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 96
Madhya Pradesh General Sales Tax Act, 1958 — Section 2, 33A

Citation : (2011) ILR (MP) 2302 : (2011) 4 MPJR 144

Hon'ble Judges : S.S. Kemkar, J;S.C. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—This appeal u/s 96 of the CPC is directed against the judgment and decree dated 28.06.1994 passed by 3rd Additional District Judge, Indore in Civil Suit No.28-A/1993.

2. Brief facts of the case are that the first Respondent Smt. Zubeda Bano filed a civil suit seeking declaration and injunction against the appellants to the effect that they have no right to interfere in her possession and to auction House No. 30-A, Greenland Colony, Sneh Nagar, Indore which is owned and possessed by her. The plaintiff averred that for the recovery of the dues of Sales Tax against a Partnership Firm M/s Jakariya Brothers, Siyaganj, Indore (for short "the Firm"), the appellants as well as the Sales Tax Department of the State Government attached the house owned by the first Respondent -plaintiff. She also averred that her husband Abdul Rehman was the owner of the said house in his personal capacity. He gifted the said house to her and the same was transferred in her name by way of registered Gift-deed dated 15.03.1990. According to the plaintiff the said house could not have been attached for recovery of the Sales Tax dues of the Firm even if her husband is Partner of the Firm.

3. The appellants/defendants No. 1 and 2 filed written-statement before the Trial Court and admitted the execution of "Hibanama" by the Abdul Rehman, Partner

of the Firm in favor of the plaintiff. Their case was that to avoid the dues of registered dealer M/s Jakariya Brothers, a Partnership Firm, its partner Abdul Rehman in order to defraud the revenue transferred the said asset in favor of his wife. According to the appellants (Defendants No. 1 and 2) in view of Section 33-A of the M. P. General Sales Tax Act, 1958 (for short "the Act of 1958") such transfer being made with intent to defraud the revenue is void. Accordingly the appellants prayed for dismissal of the suit.

4. The Trial Court framed as many as 5 issues and after recording the evidence led by the parties, decreed the suit placing reliance on the judgment of the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh, Indore and Others Vs. Radhakrishan and Others, . The Trial Court declared that the suit house is owned by the plaintiff and the defendants No. 1 and 2 have no right to interfere in her possession and to auction the same for the recovery of dues against the Firm. The said judgment and decree passed by the Trial Court is under challenged in this first appeal at the instance of the defendants No. 1 and 2/State.

5. Heard learned counsel for the parties and perused the evidence on record.

6. The fact that the dues of Sales Tax are against the Firm is not in dispute. It is also not in dispute that plaintiffs husband Abdul Rehman was Partner of the Firm at the relevant point of time. It is also not in dispute that he transferred his personal property in the name of his wife during the said recovery proceedings.

7. Shri Vivek Patwa, learned Deputy Govt. Advocate argued that in view of Section 33-A of the Act of 1958, the transfer of house was with intent to defraud the revenue, the same is void and as such the Trial Court should have dismissed the plaintiff s suit.

8. Shri A. S. Garg, learned Senior Counsel for the Respondents on the other hand submits that even if the said transfer of the property by way of gift to the plaintiff by the husband of the plaintiff during the pendency of recovery proceedings is ignored, the appellants/defendants No. 1 and 2 could not have made recovery from the property of the plaintiffs husband as the same was owned by him in his personal capacity and the said property was not the property of the Firm. He, therefore, urged that the question which requires consideration is as to whether the appellants could have attached the suit house owned by the Partner of the Firm in his personal capacity for auction and to sell the same for the recovery of the Sales Tax dues of the Firm. In support of his contention that the personal property of the Partner of the Firm could not have been attached and sold for the recovery of Sales Tax dues of the Firm, he placed reliance of the judgment of the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh and others v/s Radhakrishan and others (Supra).

9. On going through the provisions of the Act of 1958, we find that there is no provision in the Act of 1958 under which for the recovery of dues of the Firm, which is a dealer, the personal property of the Partner of the Firm can be

attached or auctioned. When undisputedly the property was personal property of the Partner and not the property of the Firm, the recovery could not have been made from the said property. In the circumstances, in view of the law laid down by the Supreme Court in the case of Commissioner of Sales Tax, Madhya Pradesh and others v/s Radhakrishan and others (Supra) in which it has been held that in view of Section 2 (d) (1), the firm being a separate legal entity for the purposes of Act in the absence of specific provision, Partners of the firm will not be liable for tax against the firm, in our considered view, the Trial Court has not committed any error in decreeing the suit filed by the first Respondent/plaintiff.

11. In view of the aforesaid law laid down by the Supreme Court, we find no merit in this appeal. The appeal deserves to be and is hereby dismissed. Parties to bear their own costs.

Appeal dismissed.