
(1998) 12 MAD CK 0039

In the Madras High Court

Case No : Second Appeal No. 21 of 1987

State of Tamil Nadu and Another

APPELLANT

Vs

M. Cauvery Ammal

RESPONDENT

Date of Decision : 09-12-1998

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 24, 24(2)

Citation : (2001) 3 LW 721 : (2004) 134 STC 562

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : T. Mathi, for the Appellant; S.P. Subramaniam, for the Respondent

Final Decision : Allowed

Judgement

A. Ramamurthi, J.—The unsuccessful defendants are the appellants.

2. The case in brief is as follows :

The plaintiff filed a suit to set aside the attachment of the suit properties made by the second defendant and for permanent injunction from bringing

the same for sale to realise the sales tax arrears and also penalty due by one Malayan Chettiar. She purchased the properties for a valid

consideration from one Dhanalakshmi Ammal under a registered sale deed dated March 1, 1973. She is in possession and enjoyment of the

properties in her own right and paying the municipal tax. The second defendant filed a written statement that the said Malayan Chettiar was an

assessee under the Tamil Nadu General Sales Tax Act, assessed to sales tax from the year 1957-58 and he was under arrears of sales tax from

1957 to 1963. On account of the tax arrears, there was statutory charge over the properties. The plaintiff issued a notice u/s 80 of the Code of

Civil Procedure, to the defendants, objecting to the attachment. The plaintiff is not liable to pay any sales tax and the attachment is also illegal.

Hence, the suit.

3. The defendants resisted the suit, stating that the suit properties were attached to the sales tax arrears due from Malayan Chettiar. He was an

assessee, having been assessed for sales tax from 1957-58. The tax for the year 1957 to 1963 still remains unpaid. The property has been

transferred subsequently to the accrual of the sales tax and, as such, there is a statutory charge on the properties. All the subsequent transfers are

only subject to the charge. The subsequent transfer, viz., in favour of Govindasamy Chettiar, Dhanalakshmi Ammal and the plaintiff will not confer

any absolute title. They are entitled to recover the arrears by proceedings under the Revenue Recovery Act.

4. The trial court framed six issues and on behalf of the plaintiff, exhibits A1 to A40 were marked and P.W.1 was examined. On the side of the

defendants exhibits B1 and B2 were marked and D.W.1 was examined. The trial court dismissed the suit and aggrieved against this, the plaintiff

filed A.S.18/85 on the file of sub-court, Salem and the appeal was allowed and the judgment and decree of the trial court were set aside and the

suit was decreed. Aggrieved against this, the defendants have come forward with the present appeal.

5. The defendants/appellants raised the following substantial question of law :

When the assessee had alienated the property subsequent to the provisional assessment notice, would not such a sale be covered by Section 24

of the Tamil Nadu General Sales Tax Act, 1959 ?

6. The points that arise for consideration are : (1) whether the plaintiff is entitled to the relief of permanent injunction ? (2) whether the attachment

made by the defendants is liable to be set aside ? (3) whether the defendants have got any statutory charge over the properties in respect of the

sales tax arrears of Malayan Chettiar ? and (4) To what relief ?

7. It is admitted that the suit property originally belonged to one Malayan Chettiar. The said Malayan Chettiar and his wife Dhanalakshmi Ammal

purchased the properties under a registered document dated April 15, 1959. They sold the property to one Govindasamy Chettiar under a

registered document dated August 31, 1962. The said Govindasamy Chettiar sold

the same to one Dhanalakshmi Ammal under a registered document dated March 11, 1968. Thereafter, the plaintiff purchased it from the said Dhanalakshmi Ammal on March 1, 1973. The learned counsel for the plaintiff stated that from the date of purchase the plaintiff is in possession and enjoyment of the property and in the municipal registry the assessment was also changed in her name and she has been paying the tax. This being so, the second defendant had attached the property for realisation of sales tax arrears due from one Malayan Chettiar and on the date of attachment the said Malayan Chettiar has no right on the title and under the circumstances, the attachment has to be set aside and the plaintiff claimed the relief of permanent injunction from bringing the property to sale.

8. The learned counsel for the plaintiff further stated that notice of provisional assessment of demand was made on May 2, 1958 as per exhibit B.1 and a final assessment for the year 1958-59 was passed on May 26, 1962 as per exhibit B.2. The learned counsel for the plaintiff strenuously contended that the plaintiff is a bona fide purchaser for value without notice of earlier proceedings and as such the plaintiff is entitled to the relief claimed by him. A number of documents have been filed on the side of the plaintiff to show that the properties have changed hands from Malayan Chettiar even in August, 1962. It is, therefore, evidently clear that Malayan Chettiar and his wife had conveyed the property on August 31, 1962, i.e., only after the provisional assessment demand as well as the final order passed by the sales tax authorities. Exhibit B2, the final assessment order, is dated May 26, 1962 and only within the period of three months, the property has been conveyed by Malayan Chettiar.

9. The learned counsel for the defendants contended that there will be a statutory charge relating to the property of the assessee and any sale of the property by the assessee would be subject to the payment of sales tax amount. According to exhibit B1 the sales tax amount was Rs. 540 and in the final assessment order exhibit B2 the tax arrears came to Rs. 1,390.52. However, the demand notice under exhibit A.36 dated August 18, 1982 disclosed that a sum of Rs. 61,616.70 has been claimed by way of tax arrears as well as penalty. The learned counsel for the plaintiff contended that no particulars were furnished by the sales tax officials as to how

such an amount has been arrived at. No doubt, the amount arrived at by way of sales tax arrears and penalty appears to be on the higher side, but, this cannot be gone into in this proceedings. The only question that can be gone into is that whether there was any statutory charge relating to the payment of sales tax payable by Malayan Chettiar and under the circumstances, one of the alienations made by Malayan Chettiar to the third party, subsequently, from the said third party the plaintiff had purchased the property would be protected or not ? The contention that the plaintiff is a bona fide purchaser for value, without notice has no relevancy so far as this case is concerned, if the defendants were able to establish that the statutory charge is created relating to the sales tax payable by Malayan Chettiar. The reasons stated supra would clearly establish that the final assessment was made in May, 1962 and the property was disposed of by the assessee in August, 1962. This is a crucial factor to be kept in mind to decide the case between the parties.

10. Section 24(2) of the Tamil Nadu General Sales Tax Act, 1959, reads as follows :

Any tax assessed on or has become payable by, or any other amount due under this Act, from a dealer or person and any fee due from him under this Act, shall, subject to the claim of the Government in respect of land revenue and the claim of the Land Development Bank in regard to the property mortgaged to it u/s 28(2) of the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), have priority over all other claims against the property of the said dealer or person and the same may, without prejudice to any other mode of collection be recovered,--

(a) as land revenue, or

(b) on application to any Magistrate, by such Magistrate as if it were a fine imposed by him :

Provided that no proceedings for such recovery shall be taken or continued as long as he has, in regard to the payment of such tax, other amount or fee, as the case may be, complied with an order by any of the authorities to whom the dealer or person has appealed or applied for revision, under Sections 31, 31-A, 33, 35, 36, 37 or 38.

11. Section 26 of the aforesaid Act relates to further mode of recovery. Section

26(6) of the Act reads as follows :

Any amount which a person is required to pay to the assessing authority or for which he is personally liable to the assessing authority under this

section shall, if it remains unpaid, be a charge on the properties of the said person and may be recovered as if it were an arrear of land revenue.

12. It is evidently clear from the language employed u/s 24(2) of the said Act that any tax assessed or has become payable or any other amount

due under this Act, will have priority over the claims against the property of the said dealer or person and the same may be recovered. It, therefore

contemplates that the arrears of sales tax payable if any, will have priority over all other claims except those two categories mentioned in Sub-

clause (2) and this being so, prima facie, it is clear that any alienation of the property made on and after the assessment of the sales tax would not

be valid unless and until the sales tax amount due and payable is cleared. The contention of the plaintiff that the amount claimed is excessive and

other matters are to be agitated before the sales tax forum and this cannot be gone into in the present suit filed by him to set aside the attachment

order.

13. The learned counsel for the defendants relied on the case of Balkishen Goenka Vs. Special Assistant Commercial Tax Officer for Sales Tax

Collection, wherein it is stated that ""it is the fiction of treating the "arrears of sales tax" as if it were an "arrear of land revenue" u/s 24(2)(a) of the

Tamil Nadu General Sales Tax Act, 1959, that attracts Section 52 of the Madras Revenue Recovery Act, 1864. u/s 24 of the Tamil Nadu General

Sales Tax Act, 1959, a charge is created over the property of a dealer for all arrears of sales tax or dues payable under the Sales Tax Act by such

dealer. As, by the creation of the statutory charge, the property is burdened until it is relieved of the same by a process known to law, a purchaser

of such property cannot escape by merely stating that he is not factually a defaulter as is properly understood and his property cannot in any

manner be proceeded with notwithstanding the fact that the property is statutorily charged for the payment of arrears of sales tax due by the person

who conveyed the property to him."" This decision is exactly applicable to the case on hand.

14. The learned counsel for the plaintiff relied on the case of P. Kannamba and

Others Vs. The Board of Revenue (C.T.) and Another, ; 1967 (1)

MLJ 466 wherein it is observed that ""section 26 of the Revenue Recovery Act will not enable the Collector to attach the property of the assessee

when they have ceased to be his property at the time when the attachment is sought to be effected"".

15. This decision is not applicable to the case on hand, because the property has passed on from the hands of the assessee even prior to the

attachment and as such, in view of the charge as per Section 24(2) of the Act, this decision cannot be applicable.

16. The plaintiff also relied on the case of K. Nagammal v. Joint Commercial Tax Officer [1973] 31 STC 607. This decision also has no

application to the case on hand, because, it has been held that the property was not the property of the defaulter on the day when the action was

initiated to attach and sell the same and the statutory authority functioning under the Revenue Recovery Act could neither attach nor sell the same

as if the property was that of the defaulter.

17. The learned counsel for the defendants also relied on the case of Deputy Commercial Tax Officer v. Asha Kumari (1985) WLR 240 wherein

the division Bench of this Court has held that u/s 24(2) of the TNGST Act a charge was created over the properties for the sales tax amount due

by the transferor even before the transfer was actually effected and the said charge can be enforced against the properties transferred, which are in

the hands of the transferee. Thus, even if the transferee is not taken to be a defaulter, the properties in his hands can be proceeded against under

the provisions of the Revenue Recovery Act, in view of the statutory provisions in Section 24(1) read with Section 24(2). This decision is exactly

applicable to the case on hand.

18. Reliance was also placed in an unreported judgment in the case of Central Bank of India v. State of Tamil Nadu (W.A. No. 981 of 1989

dated August 29, 1997)* by the learned counsel for the defendants. In this case, reliance was placed on the case of State Bank of Bikaner and

Jaipur Vs. National Iron and Steel Rolling Corporation and Others, and it is a decision under the Rajasthan Sales Tax Act. The learned counsel for

the plaintiff pointed out that there is a provision under the Rajasthan Sales Tax Act creating a first charge on the property of the dealer and similar

provision is not available and as such this decision cannot be of any use. Although the term ""first charge"" is not seen u/s 24 of the Tamil Nadu

General Sales Tax Act, 1959 it is evidently clear that a statutory charge has been created and as per exhibits B1 and B2 it is evidently clear that

even prior to sale, the final order of assessment has been made by the competent authority and under the circumstances, the plaintiff is not entitled

to get any relief and the only course open to him is to move the sales tax authorities for ascertaining the correct amount payable. Unfortunately, the

lower appellate court misdirected itself and decreed the suit filed by the plaintiff on the simple ground that on the date of attachment, the assessee

was not the owner and moreover, the plaintiff was a bona fide purchaser for value without notice. These considerations are irrelevant to decide a

dispute between the parties, more so, when a statutory charge is created, the court is not entitled to go into these questions and as there is

erroneous application of law. I am of the view that the finding given by the lower appellate court is perverse and as such, it is liable to be set aside.

On the other hand, the trial court rightly came to the conclusion that after receiving the final order under exhibit B2, the acknowledgment has been

marked as exhibit B3 signed by Malayan Chettiar. When the statutory charge is there, the alienation made by the assessee is not valid under law

and hence the plaintiff is not entitled to claim any relief.

19. In the result, the second appeal is allowed. The judgment and the decree of the lower appellate court are set aside and the suit is dismissed.

However, there will be no order as to costs.