

(1998) 02 MAD CK 0143

In the Madras High Court

Case No : Second Appeal No. 1258 of 1982

State of Tamil Nadu and Another

APPELLANT

Vs

M. Sundararaja Servai (Decd.) and Others

RESPONDENT

Date of Decision : 25-02-1998

Acts Referred:

Tamil Nadu Agricultural Income Tax Act, 1955 — Section 33, 34, 36, 62
Tamil Nadu Agricultural Income Tax Rules, 1955 — Rule 26

Citation : (2000) 243 ITR 802

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : K. Elango, for the Appellant; None, for the Respondent

Judgement

S.S. Subramani, J.—The defendants in O. S. No. 248 of 1979, on the file of the District Munsif of Mayuram, are the appellants.

2. After the second appeal was filed, the plaintiff died and his legal representatives have been impleaded as respondents Nos. 2 to 4.

3. A suit was filed for declaration and injunction, and for ordering refund of tax already collected.

4. The brief facts stated in the plaint may be summarised as follows :

According to the plaintiff, he was allotted five acres 23 cents of nanja lands in a registered partition in his family on March 23, 1976. Thereafter, he has also purchased some more properties and the total holding's are only six acres four cents. It is said that prior to the partition, he was assessed to agricultural Income Tax since the family was holding more than seven and a half standard acres. It is his case that subsequent to the partition deed, his holdings were reduced to five acres 23 cents and, therefore, he is not liable to be assessed under the Tamil Nadu Agricultural Income Tax Act, 1955. Stating these facts, he filed a petition before the second defendant, the Agricultural Income Tax Officer, Mayuram. The second defendant issued a communication on December 31, 1976,

stating that the partition deed will be given effect to from the year 1977-78. This, according to the plaintiff, is improper and illegal and, therefore, he has filed the suit for declaration and injunction, and also for getting refund of the amount collected. It is also said that he has issued notice u/s 80 of the Civil Procedure Code.

5. Apart from justifying the collection of tax, the main ground of defence taken by the defendants was that the civil court has no jurisdiction. The trial court, after taking evidence, came to the conclusion that the proceeding initiated by the defendants was correct and the civil court has no jurisdiction. It came to the conclusion that Section 62 of the Tamil Nadu Agricultural Income Tax Act is a specific bar on filing suits and it was also found that the rights and liabilities are created under that Act, which is a self-contained code. Therefore, the civil suit is not maintainable. The remedy of the plaintiff is only to file an appeal against the order of assessment or to apply for review before that authority which passed the order of assessment. The suit was dismissed.

6. The matter was taken in appeal before the lower appellate court in A. S. No. 140 of 1980, on the file of the Sub-Court, Mayuram. The lower appellate court took a different view. It held that the suit before the civil court is maintainable and Section 62 of the Tamil Nadu Agricultural Income Tax Act is not a bar. It further found that when the partition deed was brought to the notice of the authorities, they should have taken into consideration the same while passing the order of assessment. Any assessment without taking into consideration the relevant material, according to the lower appellate court, was illegal and, therefore, there is no bar for entertaining the suit. Accordingly, the appeal was allowed, and the suit was decreed, and a direction was also given to the defendants to refund the amount collected. It is against the judgment of the appellate court, the second appeal has been filed.

7. The following substantial question of law was formulated for consideration in this second appeal :

"Whether the civil court has jurisdiction in view of Section 62 of the Tamil Nadu Agricultural Income tax Act, 1955 ?"

8. After the legal representatives of the first respondent were impleaded as respondents Nos. 2 to 4, though notices were served on them, they have not cared to enter appearance. Therefore, without hearing them, on the basis of the arguments of the learned Additional Government Pleader (Taxes) who appeared for the appellants, and also on the basis of the decisions of the Supreme Court, I have to decide the question raised in this second appeal.

9. The learned Additional Government Pleader (Taxes) relied only on Section 62 of the Tamil Nadu Agricultural Income Tax Act, which reads as follows :

"62. Bar of suits in civil courts.--No suit shall be brought in any civil court to set aside or modify any assessment made under this Act and no prosecution, suit or

other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act."

10. On a reading of the Tamil Nadu Agricultural Income Tax Act, it is clear that it is a self-contained code. The rights and liabilities are created under the Act. The Act also provides for appeal against the orders of assessment and in case any excess amount has been collected, the provision has also been made for refund. Against an order of refusal to refund, an appeal lies ; a revision is also maintainable. A complete machinery is provided under the Act and it has been stated as to how an assessment has to be made. It is, after taking into consideration the nature of the statute, the jurisdiction of the civil court will have to be considered. I only rely on two decisions of the Supreme Court for the said purpose.

11. In one of the early decisions of the Supreme Court reported in *Kamala Mills Ltd. Vs. State of Bombay*, , which is a case under the Bombay Sales Tax Act. Their Lordships considered as to what is the scope of assessment made u/s 20 of that Act and the rules framed thereunder, and whether a suit to set aside the assessment is maintainable, while considering the same, in paragraph 32 of the judgment it was held thus (page 659) :

"There is one more aspect of the matter which must be considered before we finally determine the question as to whether Section 20 excludes the jurisdiction of the civil court in entertaining the present suit. Whenever it is urged before a civil court that its jurisdiction is excluded either expressly or by necessary implication to entertain claims of a civil nature, the court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by a special statute is sufficient or adequate. In cases where the exclusion of the civil court's jurisdiction is expressly provided for the consideration as to the scheme of the statute in question and the adequacy or the sufficiency of the remedies provided for by it may be relevant but cannot be decisive. But where exclusion is pleaded as a matter of necessary implication, such considerations would be very important, and in conceivable circumstances, might even become decisive. If it appears that a statute creates a special right or a liability and provides for the determination of the right and liability to be dealt with by Tribunals specially constituted in that behalf, and it further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, it becomes pertinent to enquire whether remedies normally associated with actions in civil courts are prescribed by the said statute or not. The relevance of this enquiry, was accepted by the Privy Council in dealing with Section 67 of the Income Tax Act in *Raleigh Investment Co.'s case* [1947] 15 ITR 332 ; 74 I. A. 50 ; AIR 1947 PC 78, and that is the test which is usually applied by all civil courts."

12. In *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, , the above decision was followed by a Constitution Bench consisting of nine eminent judges. In that case, the question that arose for consideration was,

whether a writ petition or a suit is maintainable for refund of excise or customs duty paid by mistake, and how far the jurisdiction of the civil court could be entertained. The majority of the judges took the view that a civil suit is not maintainable. In paragraph 23 of the judgment (at page 577), their Lordships considered this question and held thus (page 493 of 111 STC) :

"It is necessary to emphasise that the exclusivity of these provisions relating to refund--and conversely the bar to other proceedings created by them--is specific to the subject of refund and is apart from and in addition to the general bar implicit in the Act or expressed in some of its other provisions, as the case may be. Because the Act creates new rights and liabilities and also provides the machinery for assessment and adjudication of those rights and liabilities, a bar to the jurisdiction of the civil court arises by necessary implication--an aspect dealt with at some length later. (Also see principle No. 3 enunciated in *Kamala Mills Ltd. Vs. State of Bombay*, , dealt with in SCR paras. 30 to 33). The point to be stressed is that the exclusive nature of the refund provisions expressly declared in rule 11 and Section 11B, at all points of time, is an express and specific one contained in a special statute. It is not the usual finality clause found in several statutes ; it is much more."

13. u/s 62 of the Act no suit shall be brought in any civil court to set aside or modify any assessment made under this Act, and no proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act.

14. If no suit is maintainable for setting aside the assessment or to modify an assessment made under the Agricultural Income Tax Act, it follows that the question of refund of the amount also will not arise. The lower appellate court has found that the assessment has been made under that Act. The assessment is challenged only on the ground that the authorities have not taken into consideration the partition deed which was brought to its notice. It is not a case where the assessment was not made under that Act, but a relevant factor was not taken into consideration. If that be so, it cannot be challenged in a suit, and it can be challenged only in appeal or under the provisions contemplated under the Act. The plaintiff has to exhaust his remedy only by taking proceedings under the Act and not on the basis of principles. It may also be noted that the plaintiff has not applied for refund as provided in rule 26 of the Act. After having paid the amount, he challenged the assessment. If, after making an application for refund, the authorities refuse to make the refund, a remedy of appeal is provided u/s 33 of the Act. Revision is also provided u/s 34 of the Act. Apart from the same, it is the case of the plaintiff that there is a mistake in the order of assessment. He can get the mistake rectified u/s 36 of the Act. On a reading of the entire Act, it is clear that not only in respect of the assessment, but also in respect of the refund, the Agricultural Income Tax Act provides a complete machinery and, therefore, not only u/s 62 of the Act, but also by virtue of the scheme of the Act, it is clear that a civil suit is not maintainable. The finding of

the lower appellate court that the assessment was made without taking into consideration the relevant material cannot be a ground to invoke the jurisdiction of the civil court. Consequently, the substantial question of law is found in favour of the appellant, and the suit is dismissed. The second appeal is allowed by setting aside the judgment of the lower appellate court. There will be no order as to costs.