
(1984) 09 MAD CK 0014
In the Madras High Court
Case No : C.R.P. No. 5280 of 1983

State of Tamil Nadu

APPELLANT

Vs

S.N. Thirugnanam and Another

RESPONDENT

Date of Decision : 04-09-1984

Acts Referred:

Income Tax Act, 1961 — Section 28

Citation : (1986) 55 CTR 431

Hon'ble Judges : R. Sengottuvelan, J

Bench : Single Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Sengottuvelan, J.—This is a revision by the State of Tamil Nadu represented by the Agri. ITO, Tiruchirapalli, challenging the legality and

correctness of the order of the Subordinate Judge, Karur, passed in I.A. No. 105 of 1983 in C.M.A. No. 14 of 1983, directing the petitioner

herein to produce the documents filed by the assessee one S. P. Nataraja Pillai, who is no more.

2. The facts of the case are as follows : The first respondent herein, who is the son of late S. P. Nataraja Pillai, filed O. S. No. 1430 of 9182, on

the file of the District Munsif's Court, Karur, for a declaration that he is personally cultivating the agricultural lands mentioned in the plaint schedule

and for a permanent injunction restraining the second respondent herein from interfering with his peaceful possession of the suit properties. The

second respondent herein contended that he is a cultivating tenant in respect of the suit properties and as such he is entitled to the possession of the

suit properties. The District Munsif, after considering the case of both sides, dismissed the application filed by the first respondent, for an interim

injunction. Thereupon the first respondent herein filed C.M.A. No. 14 of 1983, on the file of the Subordinate Judge, Karur, challenging the

correctness of the order of the District Munsif in dismissing the application for an interim injunction. In that C.M.A., the first respondent filed I.A.

No. 105 of 1983, under s. 151 of the CPC to send for the Agricultural Income Tax file relating to late S. P. Nataraja Pillai, showing the income

derived from the suit lands and the local karnam's certificate certifying that the said S. P. Nataraja Pillai was doing cultivation in the suit lands

during the year in question and also other records pertaining to question said file. In the affidavit filed in support of the said application, the first

respondent averred that his father S. P. Nataraja Pillai during his lifetime had submitted records before the Agrl. ITO, Tiruchirapalli, showing that

he had been personally cultivating the suit lands during the years 1979-80 and 1980-81 and also enclosed a certificate issued by the local karnam

to the effect that he had been personally cultivating the suit lands. It is further stated that the first respondent had applied for certified copies of the

documents and the same was not granted by the Agrl. ITO. Late S.P. Nataraja Pillai executed a registered will bequeathing the suit properties to

the first respondent. Therefore, as legal representative of late S.P. Nataraja Pillai, the first respondent is entitled to inspect the documents produced

by his father, which are in the custody of the Agrl. ITO, Tiruchirapalli. The first respondent also waived the privilege of nondisclosure of the

records of S. P. Nataraja Pillai, available to the assessee under the provisions of the Agrl. IT Act.

3. The Agrl. ITO filed a counter affidavit claiming privilege under s. 52 of the Tamil Nadu Agrl. IT Act, 1955. It was further contended in the

counter affidavit that the copy of the original adangal or original adangal itself could be set for from the Taluk Office, Karur. Holding that the

privilege contemplated under the Act is only a privilege of the assessee and his legal representative, that there is no public interest involved; that the

documents in question are necessary to decide the dispute between the parties, the Id. Subordinate Judge directed the Agrl. ITO, Tiruchirapalli, to

produce the documents in question, namely, the file relating to late S. P. Nataraja Pillai. Aggrieved by the order, the Agrl. ITO, has preferred the

present revision.

4. The only point for consideration is, whether the file relating to the agricultural Income Tax assessment of late S. P. Nataraja Pillai can be

directed to be produced into Court before the Id. Subordinate Judge, Karur, and whether s. 52 of the Agrl. IT Act, is a bar for production of the said file.

5. Section 52 of the Agrl. IT Act reads as follows :

52(1). All particulars contained in any statement made, return furnished or or accounts or documents produced, under the provisions of this Act,

or in any evidence given or affidavit or deposition made in the course of any proceedings under this Act, other than proceedings under this Chapter

or in any record of an assessment proceeding or any proceeding relating to the recovery of a demand prepared for the purpose of this Act shall be

treated as confidential and notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872), no Court shall, save as

provided in this Act, be entitled to require any public servant to produce before it any such return, accounts, documents or record or any part of

such record or to give evidence before it in respect thereof.

(2) If a public servant discloses any particulars contained in any such statement, return accounts, documents, evidence, affidavit, deposition or

record, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine.

Section 52 of the Agrl. IT Act is analogous to s. 54 of the Indian IT Act, which contains a similar provision. The question to be considered is

whether the legal representative of an assessee can ask for disclosure of the documents pertaining to the file of an assessee of agricultural Income

Tax, by waiving such a privilege.

5A. The main contention of the learned Government Pleader is that the file or the documents filed by the assessee cannot be directed to be

produced into Court under any circumstances and s. 52 of the Agrl. IT Act totally prohibits the disclosure of the documents. In support of this

contention, reliance is placed upon the decision of the Supreme Court in Charu Chandra Kundu Vs. Gurupada Ghosh, , where the Supreme Court

observed as follows :

It is manifest that disclosure of information given to public servants in the course of Income Tax proceedings has by a comprehensive provision

been prohibited,. The Income Tax authorities are directed by the provisions to treat the information disclosed produced as confidential, the Courts

are prohibited from requiring any public servant to produce the documents or the records and even to give evidence in respect thereof, and the

given servants disclosing the particulars of the evidence, documents or record are penalised. The statement alleged to be made by the respondent

in the assessment proceedings is not of the nature described in sub-s. 3 of s. 54 and is, therefore, not exempt from the operation of sub-ss. (1) and

(2). There being an express interdict against the Court requiring production of the document, the Subordinate Judge was right in declining to

accede to the request of the appellant.

Further, the Supreme Court has also negatived the contention that the assessee can waive the privilege enacted for the protection of the assessee.

The relevant passage may usefully be extracted :

the prohibition imposed against the Court by s. 54 is absolute; its operation is not obliterated by any waiver by the assessee in whose assessment,

the evidence is tendered, document produced or record prepared.

In a subsequent decision of the Supreme Court reported in CIT v. Laxmichand Narayandas AIR 1962 SC 121, the Supreme Court, confirming

the view expressed in Charu Chandra Kundu Vs. Gurupada Ghosh, , has observed as follows :

Section 54 applies to all documents which form part of the record of assessment proceedings and it makes no difference whether such documents

are produced by the assessee himself or by a third party. The section contains in effect an unconditional prohibition against a public servants

producing any such documents in a Court, and that prohibition does not exclude any criminal process from its operation.

6. The contention of Mr. Sivamani, Id. counter for the respondents, is that the privilege of the assessee can be waived by the legal representative

and in support of this contention he relied on the decision reported in Kaderkutty v. Agri. ITO AIR 1962 Ker 32 where a single Judge of the

Kerala High Court, while dealing with a similar case, held as follows :

The objection of s. 54 IT Act to afford protection to the assessee, against disclosure of the particulars of his financial position to his detriment by

ITO (s) a Court cannot require the ITO to produce before it, the documents

specified in s. 54(1) of the IT Act or to give evidence in respect of them whatever be the provisions in the Indian Evidence Act :

Section 54(1) of IT Act does not contemplate two privilege, one a privilege of the assessee and the other a privilege of the ITO. It refers only to

one privilege in respect of all documents, including ""any record of an assessment proceedings."" The ITO stands in need of no special privilege

concerning the ""particulars"" referred to in s. 54(1), beyond that he can claim and what he is entitled to under the provisions of the Evidence Act.

Far from conferring a privilege on the ITO, s. 54(1) and (2) seems to impose a restraint on him from making disclosures of the contents of the file.

The privilege being that of the file. The privilege being that of the assessee can be waived by him.

Mr. Sivamani, Id. counsel for the respondents further cited a Full Bench decision of this Court reported in Katikineni Venkata Gopal Narasimha

Rama Rao v. Chetluri Venkataramayya ILR 1940 Mad 969, where it has been held :

A profit and loss statements and a statements showing the details of net income, filed by an assessee in support of his return of income furnished

under s. 22 of the Indian IT Act, are public documents with reference to s. 74 of the Indian Evidence Act, of which certified copies would be

admissible under s. 65(e) of the Indian Evidence Act.

The contention is that when certified copies would be given, there is no bar to produce the documents into Court. The question whether an

assessee can waive the privilege under s. 54 of the Indian IT Act, was also considered by a Division Bench of this Court in the case reported in

Muniyammal, Proprietrix, Salem Vs. Third Additional Income Tax Officer, Salem and Another, , where the Court came to the conclusion that

where there are more than one legal representative of an assessee, all of them should concur in applying for inspection or for granting copies from

the Income Tax authorities. The Court observed as follows :

Subject to the exceptions recognised in s. 54 of the Indian IT Act (XI of 1922), the prohibition against the disclosure of the statements made by

an assessee is absolute. The statements are made confidential. There can be no breach of confidence if it is disclosed to the maker or those would

be deemed to be makers, e.g. partners, members of Hindu Joint family where a

Karta made a statement. But neither the rule nor the principle would apply when an assessee dies leaving legal representatives. Where, therefore, there is a plurality of legal representatives all of them should concur in applying for the inspection of or for obtaining the copies of statements from the authorities. Though the returns or the statements made by an assessee are public documents under s. 74 of the Evidence Act 1 of 1872) a person may get a copy of a public document only if he has right to inspect the same under s. 76 of the Act. But right to inspection be claimed by a person only if he has a direct and tangible interest in that documents.

The views expressed in the above decisions cited by the Id. counsel for the respondents that the privilege contemplated is that of the assessee and the assessee or his legal representatives can waive the same and that the documents relating to the assessment are relating to the assessment are public documents to which the assessee or his legal representatives are entitled to copies, had been negatived by the Supreme Court in the two subsequent decisions referred to above. The views expressed by the Supreme Court in Charu Chandra Kundu Vs. Gurupada Ghosh, and in Commissioner of Income Tax, Bombay Vs. Laxmichand Narayandas and Another, , though rendered under s. 54 of the Indian IT Act, are applicable to the facts of this case since s. 52 of the Agrl. IT Act is similar to s. 54 of the Indian IT Act.

8. In view of the two subsequent Supreme Court decisions mentioned above, the principle expressed in the decision reported in Katikineni

Venkata Gopala Narasimha Rama Rao v. Chitluri Venkataramayya ILR 1940 Mad 969 and the decisions reported in Muniyammal, Proprietrix,

Salem Vs. Third Additional Income Tax Officer, Salem and Another, , cannot hold the field. Therefore, the documents pertaining to Agricultural

Income Tax assessment cannot be directed to be produced into Court. Consequently, the conclusion arrived at by the Id. Subordinate Judge,

Karur, cannot be sustained and the same is set aside. The civil revision petition is allowed. Since the petitioner succeeds on the question of law, I

make no order as to costs.