(1970) 11 AHC CK 0009

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1477 of 1969

Surendra Dubey APPELLANT

Vs

Collector and Others RESPONDENT

Date of Decision : 13-11-1970

Acts Referred:
Income Tax Act, 1961 — Rule 11(6), 9

Citation : (1971) 82 ITR 133

Hon'ble Judges : V.G. Oak, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati, for the Appellant; B.L. Gupta and R.R. Misra, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Oak, C.J.—This writ petition arises out of proceedings under the Income Tax Act, 1961. Surendra Dubey is the petitioner. He in the son of Haridwar Dubey.

2. A sum of Rs. 52,250 was assessed against Haridwar Dubey as Income Tax. A further sum of Rs. 5,000 was assessed as penalty against Haridwar Dubey. The authorities proceeded to realise the sums that were due from Haridwar Dubey towards Income Tax and penalty. Certain plots were attached. Surendra Dubey filed an objection to the effect that the plots in question did not belong to Haridwar Dubey individually and the land belongs to the joint Hindu family consisting of Haridwar Dubey and Surendra Dubey. In spite of the petitioner''s objection, the land was sold on March 25, 1969, and was purchased for Rs. 10,000 by Jit Narain Dubey, who is respondent No. 3 in the writ petition. Surendra Dubey has filed this writ petition challenging the attachment and sale proceedings.

3. The basis of the petition is that the land in question does not belong to Haridwar Dubey, the defaulter. It is joint family property. The position is disputed by the respondents. According to the affidavit filed on behalf of the Collector,

Gorakhpur, there is no material on the record to support the petitioner''s claim that this is joint family property. Another counter-affidavit has been filed by Jit Narain Dubey, who has purchased the property. According to Jit Narain Dubey, this is Haridwar Dubey''s separate property.

4. Whether the property in dispute is Haridwar Dubey''s separate property or is joint Hindu family property is a question of fact. It is not convenient to decide this controversy in the present summary proceedings.

5. It has been urged for the petitioner that proceedings for attachment and sale were taken under the provisions of the U. P. Zamindari Abolition and Land Reforms Act, although those provisions are not applicable to proceedings under the Income Tax Act, 1961. In support of this contention, the petitioner has filed annexure A-l, dated January 25, 1969. Annexure A-1 refers to U. P. Act No. 1 of 1951 and certain rules framed under that Act. In the counter-affidavit filed on behalf of the Collector it was conceded that such forms were used in the present proceedings. But it is suggested that the proceedings were in fact held under the Income Tax Act, 1961.

6. We have compared the procedure prescribed by U. P. Act No. 1 of 1951 and by the Income Tax Act, 1961. There is hardly any material difference in the two procedures so far as a stranger may file an objection to the effect that the attached property belongs to the objector and does not belong to the defaulter. In the present case also the petitioner was able to file such an objection and the authorities were aware of the objection filed by the petitioner.

7. In paragraph 22 of the counter-affidavit filed by Udai Bhan Singh the detailed procedure followed by the authorities has been explained. Firstly, there was a report from the Sub-Divisional Officer, Bansgaon. It was suggested that objection might be filed within 30 days from the date of sale. The sale was actually held on March 25, 1969. A number of authorities appear to have participated in these proceedings. Mr. R. K. Gulati, appearing for the petitioner, contended that the Sub-Divisional Officer and the Additional District Magistrate were not competent to deal with the matter. No such point has been raised in the writ petition.

8. It will be seen that, although the petitioner did file an objection against the proposed sale, no definite order was passed by the authorities before selling the property. The procedure adopted appears to be irregular. Rule 11 of the Second Schedule to the Income Tax Act, 1961, provides for investigation by the Tax Recovery Officer with respect to such an objection.

9. The objection should have been disposed of before putting the property to sale.

10. Mr. R. K. Gulati contended that in case this court does not grant relief in the present petition, the petitioner has no other remedy. He relied upon rule 9 of the Second Schedule to the Act. Rule 9 lays down a general bar to jurisdiction of civil courts. Rule 9 states :

"Except as otherwise the expressly provided in this Act, every question arising between the Income Tax Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate duly filed under this Act .....shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises."

11. This provision is similar to Section 47, Civil Procedure Code. Rule 9 must be confined to disputes between the Income Tax Officer and the defaulter or his representative. The present petitioner is neither a defaulter nor his representative. The petitioner bases his claim on his own title. Rule 9 will not, therefore, preclude him from establishing his title before the civil court.

12. The matter has been further clarified in rule 11. Sub-rule (6) of Rule 11 states :

"Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive."

13. This provision makes it clear that it is open to the petitioner of establish his title before the civil court.

14. The petitioner contended that omission to investigate the objection under Rule 11 entitled the petitioner to a relief under Article 226. Reliance is placed upon SHAKOORAN BIBI Vs. Income Tax OFFICER, A-WARD, MEERUT, AND OTHERS., . In that case the wife of the defaulter filed an objection claiming that the attached property belonged to her. The Additional Collector, Meerut, passed an order that the objection was misconceived. It was held by a single judge of this court that in proceedings u/s 46(2) of the Income Tax Act an objector is entitled to have his objection disposed of by the Collector.

15. The facts of the present case are peculiar. Admittedly, a large sum of money is due from Haridwar Dubey. The present petitioner is Harid-war Dubey''s son. It is the petitioner''s case that the property in dispute belongs to the joint Hindu family consisting of the petitioner and his father. Under the Hindu law a son is under a pious obligation to pay off his father''s debts which are not tainted with immorality. Bearing that principle in mind, we are not disposed to interfere in the matter at the instance of the son. We wish to make it clear that we are not giving a definite finding that the present petitioner is liable for the sum that is outstanding against the father on account of Income Tax and penalty.

16. As already discussed, it is open to the petitioner to establish his claim before the civil court. Since the petitioner has an alternative remedy, we need not interfere under Article 226 of the Constitution.

17. The petition is dismissed. Parties shall bear their own costs. The stay order is vacated.

