

(1974) 07 AP CK 0018

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 501 of 1974

Syed Khaja

APPELLANT

Vs

Raghavendra Rao and Others

RESPONDENT

Date of Decision : 22-07-1974

Acts Referred:

Constitution of India, 1950 — Article 227
Income Tax Act, 1961 — Section 226(4)

Citation : (1976) 103 ITR 294

Hon'ble Judges : Sambasiva Rao, J

Bench : Single Bench

Advocate : Advocate General and K.V. Subrahmanya Narsu, for the Appellant; P. Rama Rao, for Respondent No. 1, C.P. Sarathy and B.C. Jain, for the Respondent

Judgement

Sambasiva Rao, J.—While finding a suit for specific performance of an agreement of sale in his favour, the plaintiff deposited into court the balance of the consideration money agreed upon under the agreement, along with the amounts necessary for executing and registering a sale deed in his favour. Can this amount be considered as "belonging" to him within the meaning of Section 226(4) of the Income Tax Act, 1961 ? It is this question that arises for decision in this revision petition brought under Article 227 of the Constitution.

2. Let me at the outset note the material facts. The suit for specific performance is O.S. No. 13 of 1962, in the City Civil Court, Hyderabad. Respondent No. 2 in the revision petition executed the agreement of sale on October 9, 1962, in favour of the petitioner (plaintiff) agreeing to sell a house in Secunderabad for Rs. 60,000. A sum of Rs. 20,000 was paid on that day itself. However, the second respondent sold the property to respondents Nos. 3 to 8 on which the suit was filed by the petitioner. The trial court awarded only damages and declined to grant specific performance. C.C.C.A. No. 71 of 1964 filed by the plaintiff was allowed by this court and specific performance was decreed. The respondents' appeal to the Supreme Court was unsuccessful. As much as Rs. 48,394.77 was in

deposit in the lower court. As the respondents failed to execute the sale deed, the court appointed a Commissioner to discharge that function and accordingly the Commissioner executed the sale deed in favour of the petitioner on December 27, 1973. It is not yet registered for the reason that the second respondent has not produced the Income Tax clearance certificate as is required for all sales for amounts beyond Rs. 50,000. It appears, the petitioner is in arrears of Income Tax. The Income Tax Officer, L-Ward, acting u/s 226 of the Income Tax Act, got the house sold to the petitioner, attached on January 1, 1974. He further filed E.A. No 35 of 1974, for paying out to him the sum of Rs. 48,394.77 in deposit in court to the credit of O.S. No. 13 of 1962.

3. This payment was ordered by the court below holding that the second respondent has not yet become the owner of the amount and so it is liable to be paid out to the Income Tax department as "belonging" to the petitioner. The process of the learned judge's reasoning is that the registration has not yet taken place and if anything happens to the house in the meanwhile, the registration cannot be effected and there is a possibility of the second respondent not becoming entitled to the amount at all. Until registration takes place the amount in deposit continues to "belong" to the petitioner.

4. I may here mention that while decreeing the suit for specific performance, this court in C.C.C.A. No. 71 of 1964, directed that the second respondent shall, at the expense of the appellant-plaintiff, execute and procure registration of a proper and sufficient sale, deed of the house. As I have pointed out, the needed sum for execution and registration of the sale deed had already been deposited by the petitioner. This court further directed that on the execution and registration of the sale deed, the second respondent shall be at liberty to withdraw the balance of the sale price of Rs. 40,000 deposited by the petitioner in the lower court without furnishing security. Costs were awarded to the petitioner. It is significant to note that the trial court paid out the amount of the costs to the petitioner from out of the amount he had deposited while filing the suit. The attempt of the Income Tax Officer is to adopt "other modes of recovery" of arrears of tax as provided u/s 226 of the Income Tax Act, Sub-section (4) thereof says :

"The Income Tax Officer may apply to the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax."

5. Claiming that the amount in deposit belongs to the petitioner, its payment is sought under this provision of the law. This view appealed to the lower court.

6. I am, however, unable to agree with it. I shall proceed to state my reasons for my disagreement. The words "belonging to" need not necessarily connote ownership or proprietorship. The words are also used to indicate pertaining to, having a right or possession. The petitioner cannot get out of the mischief of

Section 226(4) by merely contending that the amount in deposit is not his property or that he is not the full owner thereof. That may be so; but could it be said that he has a controlling right over the amount ? If he has no controlling right over the money and its final disposal depends on the final result of the case, it cannot be said that it " belongs" to him. He cannot withdraw the amount at his will and pleasure. Even if he applies for the withdrawal of the amount, he cannot get that relief. This court has directed in C.C.C.A. No. 71 of 1964 that he should deposit the amount into court. Indeed, the petitioner did not wait until the passing of this decree to make the deposit. He did it even when he instituted the suit. As per the decree, the sale deed has been executed and is awaiting registration. So any amount of exertion or any number of petitions cannot get back the amount to the petitioner. It is, therefore, not possible to say that the amount " belongs " to the petitioner.

7. Further, the amount had been deposited and by virtue of the decree passed by this court in appeal, the amount has become earmarked towards the payment of the balance of consideration to the second respondent. Once it is earmarked for the specific purpose of payment to the second respondent, the amount ceases to be the property of the petitioner. I draw support for this view from the decision of the Division Bench in Dhanji Shan Mistry v. Sikander Nawaz Jung, ILR [1966] AP 1268.. No doubt, in Sri Ramalingeswara Rice and Oil Mill Co. Ltd. Vs. The Additional Income Tax Officer, Tenali and Another, , another Division Bench had opined that " mere direction to deposit a particular sum of money does not amount to its being earmarked for a particular purpose. It is only when there is a definite order directing appropriation of the amount deposited that other creditors or the Government could have no claim to it." The decree of this court in C.C.C.A. No. 71 of 1964 is tantamount to such direction. Indeed, the act of earmarking and appropriation can be seen from the very fact that the petitioner was paid by the trial court the amount of costs decreed to him from out of this amount itself. It should have been done clearly on the basis that the amount had already been earmarked and appropriated towards the balance of consideration. The sale deed has also been executed, though not registered by the time the payment was sought to be made by the department.

8. As a matter of fact, the very purpose, spirit and intendment of Section 226(4) make it patent that only such amounts over which the assessee has full proprietary right or an exercisable right that can be proceeded against. Otherwise, there is no question of recovery of the Income Tax. By no stretch of imagination could it be said that the petitioner has still the option open to him to withdraw the amount. The department cannot have a higher right than the petitioner. I have, therefore, no hesitation to hold that the amount in deposit in court and awaiting to be paid to the second respondent on registration being completed does not belong to the petitioner. The learned judge of the court below has, in my opinion, made a wrong approach to the problem by trying to find out whether the second respondent has become the full owner of the money. That is clearly trying to resolve the problem from the wrong end and on a wrong

basis.

9. For these reasons I allow the revision petition and set aside the order of the court below made in E.A. No. 35 of 1974. Having regard to the circumstances of the case the parties shall bear their own costs.