

(1994) 11 MAD CK 0053
In the Madras High Court
Case No : Writ Petition No. 14906 of 1992

T. Chitra

APPELLANT

Vs

Tax Recovery Officer

RESPONDENT

Date of Decision : 30-11-1994

Acts Referred:

Income Tax Act, 1961 — Rule 11

Citation : (1994) 11 MAD CK 0053

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : M. Venkatachalapathy for M/s C.N.G. Nirmathi and M.S. Ramesh, for the Appellant; S.V. Subramaniam, for the Respondent

Judgement

Raju, J.—When the Writ miscellaneous petition came up for hearing, having regard to the nature of the relief sought for and the stage of

proceedings before the authorities below, it was considered necessary to have the main writ petition itself for hearing and final disposal. The

learned counsel appearing on either side had no objection for the said course being adopted.

2. The above writ petition has been filed for the following relief :

to issue a writ in the nature of writ or mandamus, or any other appropriate writ or order or direction, directing the respondent herein not to bring

the petitioner's share of the property in Door Nos. 2 and 3, Krishna There in Gandhiji Street No. II, Veerappan Chathiram, Erode for sale in

order to recover the arrears of tax that is due from Mr. Thangamani, husband of the petitioner herein, and pass such further or other orders as this

Hon'ble Court may deem fit and proper in the circumstances of the case".

3. The respondents have also filed a counter-affidavit. To which a reply has been

filed. In view of a development noticed during the course of hearing, I am of the view that it is unnecessary for this Court to adjudicate on the issues raised on behalf of the petitioner as well as the respondent, at this stage.

4. There is no controversy over the position that on 28th August, 1992, the petitioner, who is the wife of the assessee defaulter has stated a claim

before the respondent-TRO that she is the absolute owner of half of the land and superstructure of the property, bearing No. 2 and 3, Krishna

Street, Veerappan Chatram, Erode, and it is illegal for the respondent to propose to sell the share of the property belonging to the petitioner also

for the arrears of tax of K. Thangamani, the husband of the petitioner. As and when such a claim is stated by any one, it becomes necessary for the

respondent-TRO to investigate the same in the manner provided and decide the issue in terms of r. 11 of the Sch. II to the IT Act, 1961. Rule 11

referred to above contains appropriate provisions and sufficient safeguards in this regard. In similar circumstances, a Division Bench of this Court

had an occasion to deal with the situation and issue appropriate directions in W.P. No. 7594/90 (George Thomas vs. TRO) by their order dt. 6th

September, 1994. The learned Judge of the Division Bench has declared the position to be as hereunder :

Reliance is placed on r. 11(3) to the Rules in Sch. II of the IT Act. Sub-r. (3) has to be read in the context of sub-r. (1), which deals with the

claim preferred or objection made to the attachment or sale of the property. The said claim or objection has to be investigated by postponing the

sale in case the sale had been ordered, as would be clear from sub-r. (2). In order to facilitate investigation of the claim, the claimant or objector

has to produce evidence in support of his claim or objection. It is true that sub-r. (3) requires the claimant to show that he has some interest or was

possessed of the property under attachment. The use of the word "possessed" does not mean mere possession and would not in any case include

possession for or on behalf of the defaulter. This rule is a part of the scheme given under r. 11 of the Sch. II and hence, the word ""possession"" has

to be appreciated in the context not only of the claim or objection preferred or made under sub-r. (3), but also under the aforesaid right of the

TRO to investigate under sub-r. (4). Sub-r. (4) requires the TRO to be satisfied

that the property was not in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him or that, being in the possession of the defaulter at the said date it was so in his possession not on his own account or as his own property, but on account of or in trust for some other person or partly on his own account and partly on account of some other person. This would, therefore, clarify that the word "possession" used in sub-r. (3) has to be "possession" of the claimant or objector in his own right and not in trust or for or on behalf of the defaulter". Therefore, the broad submission that only possession has to be seen and nothing else, as canvassed by the learned counsel in the instant case, cannot be accepted. The submission that no finality being attached to the decision of the TRO in the matter of title, does not take away the jurisdiction of the said Officer to decide the title. This is clear from sub-r. (6), which permits the person aggrieved by the decision of the TRO to institute a civil suit to establish the right, which he claims over the property in dispute and the order of the TRO is given finality only subject to the decision in the suit. In other words, if the party, against whom the decision is given by the TRO does not challenge the same by filing a suit in a civil court, the said order itself would become conclusive. This would, therefore, indicate that the right to decide even the question of ownership and title remains with the TRO. Under the circumstances, the notice given to the petitioner to produce evidence in support of his objections, should not have offended the petitioner in any manner. The petitioner should have realised that he himself has stated in his claim application that he was the owner of the said property.

5. In the light of the above, it is for the respondent to call upon the petitioner to produce the necessary materials in terms of the stipulations contained in r. 11 and proceed in the matter further in accordance with law subject to the further rights of the respective parties thereafter. In the light of the above, the TRO shall not proceed with further action for the sale of the property till such time as the adjudication provided for under r. 11 of the Sch. II is undertaken and final orders are passed. Thereupon, the rights of parties shall abide by the orders that may be passed under the said provisions of law. The writ petition shall stand finally disposed of on the above terms. The orders passed in this writ petition shall not preclude

the respondent from proceeding against the half share of the husband, if the authority so desires. No costs.