(1978) 02 MAD CK 0037

In the Madras High Court

Case No : Civil Revision Petition No. 1734 of 1975

Tax Recovery Officer APPELLANT

Vs

V.A. Ramaswami and Others RESPONDENT

Date of Decision : 08-02-1978

Acts Referred:
Income Tax Act, 1961 — Rule 16, 2

Citation : (1978) 114 ITR 408

Hon'ble Judges : Suryamurthy, J

Bench : Single Bench

Advocate : A.N. Rangaswami, for the Appellant; V. Nicholas, for the Respondent

Judgement

Suryamurthy, J.—This is a civil revision petition against an order of the learned IInd Additional Subordinate Judge, Coimbatore, allowing E.A. No. 945 of 1974 in O.S. No. 267 of 1968 on the file of the Sub-Court, Coimbatore, filed by the decree-holder to raise an attachment over the amount in court deposit, being the balance of the sale price of the property of the judgment-debtor sold in court auction. V. A. Ramaswami, the, first respondent herein, filed O.S. No. 267 of 1968 on the file of the Sub-Court, Coimbatore, against G. R. Venkatesalu, now dead, and obtained a decree for Rs. 32,141.50 with future interest and costs. This amount was due to the said V. A. Ramaswami under a promissory note executed by G. R. Venkatesalu. The deceased defendant was a defaulter in the payment of Income Tax. Therefore, in 1969, on a certificate received by him from the Income Tax Officer concerned, the Tax Recovery Officer, Coimbatore, caused a notice to be served upon the defaulter, to wit G. R. Venkatesalu, requiring him to pay the amount specified in the certificate within fifteen-days from the date of service of the notice and intimating that in default steps would be taken to realise the amount under the Second Schedule to the Income Tax Act, 1961. The notice was under Rule 2 of the same Schedule. After the suit was decreed and while execution proceedings were pending, G. R. Venkatesalu died and his legal representatives were brought on record in E.A. No. 2543 of 1973. E.P.R. No. 627

of 1970 was filed by the decree-holder and an attachment of the property of the judgment-debtor was effected. Subsequently, the decree-holder filed E.A. No. 170 of 1972 for permission to bid and set off and obtained such permission on March 8, 1972. He bid at the auction held on March 8, 1972, for a sum of Rs. 70,110 and deposited a sum of Rs. 30,177.35 after adjusting the amount due to him under the decree in his favour. Meanwhile, one of the creditors of the deceased defendant filed an application, E.A. No. 970 of 1972, to direct the auction-purchaser to deposit the entire amount under Order 21, Rule 72 and Rule 73, for rateable distribution among the creditors. This petition was allowed on October 23, 1972. Thereafter, the auction-purchaser-cum-decree-holder filed E.A. No. 969 of 1972 u/s 73 of the CPC for rateable distribution of the assets. This petition was allowed on October 23, 1972. He filed an application for the issue of a cheque. In the meantime, the revision petitioner who was the second respondent in E.A. No. 945 of 1974, attached the amount in court deposit on the ground that the Government had priority over the amount for recovery of the tax arrears due from the tax defaulting judgment-debtor. Therefore, the decree-holder filed the application to set aside the attachment effected by the Tax Recovery Officer. The Tax Recovery Officer contended that in view of Rule 2 read with Rule 16 of the Second Schedule to the Income Tax Act, the attachment of the property by the decree-holder is illegal and that the consequential proceedings also are illegal and have to be set aside and that no sale can take place. Ignoring the contentions of the Tax Recovery Officer but noticing them, and evading a decision on the points raised by the Tax Recovery Officer, the learned subordinate judge allowed the petition to raise the attachment. Rule 16 of the Second Schedule to the Income Tax Act lays down:

"Where a notice has been served on a defaulter under Rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money."

2. Therefore, the order of attachment passed by the learned subordinate judge in execution of the decree in favour of the plaintiff in O.S. No. 267 of 1968, namely, V.A. Ramaswarni, is not valid. Consequently, the sale in court auction itself is void as the order of attachment and subsequent orders have been passed by the court without any jurisdiction. I say "without any jurisdiction" because Rule 16 of the Second Schedule to the Act has the effect of depriving the civil court of any jurisdiction to issue any process against the property of a defaulter on whom a notice under Rule 2 of the said Second Schedule has been served. Therefore, the order of the learned subordinate judge raising the attachment subsequently effected by the Tax Recovery Officer, which was wholly unnecessary in view of the service of the notice under Rule 2 of the Second Schedule to the Income Tax Act, has to be set aside. In passing, I may observe that by an order dated 12th December, 1974, the sale of the property in E.P. No. 627 of 1970 in O.S. No. 267 of 1968 on the file of the Sub-Court, Coimbatore, held on March 8, 1972, and

confirmed on December 30, 1972, has been set aside. Notwithstanding this, the order raising the attachment has to be set aside and is set aside. If the sale had been set aside, the auction-purchaser will be entitled to refund of the amount in court deposit. The Income Tax department is entitled to pursue the remedies open to the department. No costs.