
(1960) 03 CAL CK 0010

In the Calcutta High Court

Case No : Appeal from Original Decree No. 114 of 1955

UNION OF INDIA

APPELLANT

Vs

SATYANARAYAN KHAN AND OTHERS.

RESPONDENT

Date of Decision : 22-03-1960

Acts Referred:

Bengal Public Demands Recovery Act, 1913 — Section 7
Civil Procedure Code, 1908 (CPC) — Order 21 Rule 50(1)(b)

Citation : (1961) 1 ILR (Cal) 644 : (1961) 42 ITR 42

Hon'ble Judges : Renupada Mukherjee, J; Kamalesh Chandra Sen, J

Bench : Full Bench

Judgement

RENUPADA MUKHERJEE, J. - The Union of Indian is appellant in this appeal. The appeal is being resisted by responded, Satyanarayan Khan, who was the sole plaintiff in the trial court. The suit from which this appeal has arisen was instituted by the plaintiff for several reliefs. Among other reliefs prayed for by him, there was a prayer for a declaration that three certificates filed and issued by the Certificate Officer, Alipore, 24 Parganas, were invalid and inoperative as against him. There was also a prayer for cancellation of these certificates. There was also a prayer for a declaration that the attachment of some movable properties described in schedule B of the plaint was null and void.

The suit was contested by the union of India in the trial court. The defence which is material for the purpose of the present appeal was that the certificates mentioned in the plaint were valid and binding upon the plaintiff and so the attachment of plaintiffs moveables which followed the execution of the certificates is valid. Some other issues of a rather technical nature were also raised in the court below at the instance of the contesting defendant. But they were not pressed on behalf of the appellant in this appeal. Upon the evidence adduced on behalf of both parties the court below made a declaration that the certificates in question were invalid and inoperative and not binding on the plaintiff and the attachment of the properties of the plaintiff was also declared to be void. This appeal was preferred by the Union of India from the above

judgment and decree passed by the trial court.

The facts which have given rise to the present appeal are more or less admitted. There was firm of the name and style of Messrs. "Satyanarayan Khan - Kalicharan Sadhukhan" which carried on business in various kinds of oil. This was a partnership firm of which the component members were plaintiff Satyanarayan Khan, Kalicharan Sadhukhan and Bepin Behari Tat. The firm was as unregistered one. By the Income Tax authorities this firm was assessed for the years 1943-44, 1944-45 and 1945-46. The amount of taxes payable for the assessment of the above Income Tax years were respectively (1) Rs. 1,091-2-0, (2) Rs. 59,972 and (3) Rs. 71,930-8-0. These amounts were not paid by the firm although notice of demand u/s 29 of the Income Tax Act was served on the assessee firm. Thereupon, action was taken by the Income Tax Officer u/s 46(2) of the Income Tax Act, who certified that the taxes mentioned above were not paid. On receipt of this certificate the Certificate Officer of Alipore filed three certificates u/s 4 of the Public Demands Recovery Act. These cases were Certificate Cases Nos. 1115 I.T. of 1948-49, 1130 I.T. of 1948-49 and 366 I.T. of 1948-49. Notices were issued u/s 7 of the Public Demands Recovery Act and served upon the firm. The taxes were not paid. There upon some movable properties belonging to the plaintiff-partner were attached. The plaintiff raised an objection before the certificate Officer which was dismissed and an appeal preferred by him was dismissed by the Collector of 24 Paraganas on 18th July, 1950. Thereupon, the present suit was instituted by the plaintiff on 16th December, 1950, for the reliefs which we have already mentioned.

The first and foremost question which calls for our determination in this appeal is whether the personal goods of the plaintiff respondent were liable to be attached in execution of a certificate which was signed and prepared against unregistered firm known as Satyanarayan Khan - Kalicharan Sadhukhan or which the respondent was one of the admitted partners during the relevant period. The firm has since been dissolved or discontinued. According to the statement made in the plaint the firm was dissolved since Baisakh, 1344 B.S., that is, corresponding to some time in April, 1947. It is not known at what exact time the fact of dissolution of the firm was brought to the notice of the Income Tax authorities. But from a letter marked exhibit 2(c) in the trial court which bears the date of 3rd October, 1947, we may take it that the fact of dissolution or discontinuance of the partnership firm was brought to the knowledge of the Income Tax Officer who was dealing with these assessments on 3rd October, 1947, or shortly thereafter. It is at least clear the Income Tax Officer placed the matter before the certificate Officer u/s 46(2) of the Income Tax Act, the fact of dissolution or discontinuance of the partnership was brought to his knowledge. The Certificate Officer prepared and filed the certificates in the name of the dissolved firm. When the matter, however, came to the execution of the certificates the personal belongings of the plaintiff respondent were attached.

Mr. Meyer, learned counsel for the appellant, contended before us that although

for the purpose of the Income Tax act the firm was a separate assessable unit or entity, in reality the firm had no separate or independent existence apart from its constituted members, namely, the partners. He, therefore, contended that the certificates which had been filed against the firm were capable of execution against the partners. In this connection Mr. Meyer drew our attention to a decision of the Supreme court reported in *Dulichand Laxminarayan v. Commissioner of Income Tax*. He particularly drew our attention to the following two passages of the judgment occurring at pages 541 and 542 of the report. The first passage runs to the following effect :

"In other words, a firms name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership."

The second passage runs to the following effect :

"We need only refer to the case of *Bhagwanji Morarji Goculdas v. Alembic Chemical Works Co. Ltd.* where it has been laid down by the Privy Council that Indian law has not given legal personality to a firm apart from the partners. This view finds support from and is implicit in the observations made by this court in *Commissioner of Income Tax v. A. W. Figgies & Co.*"

Relying on the observations of the Supreme Court quoted above Mr. Meyer argued that although the assessment was made in the name of the firm and although the certificates were signed and filed u/s 4 of the Public Demands Recovery Act showing the firm as the certificate debtor, the taxes based upon the assessments in question were recoverable from the partners of the firm inasmuch as the firm and the partners of the firm were inter-changeable terms for the purpose of realization of the Income Tax. We shall presently examine how far there is any substance in this contention.

Before we proceed any further, we may refer to one of the findings made by the trial court which has got a substantial bearing on the question we are discussing. That finding is to the effect that the certificate proceedings were entirely null and void inasmuch as the proceedings were started and conducted against a dissolved firm.

Dr. Gupta appearing on behalf of the plaintiff conceded that this finding cannot be accepted as correct, because even though the firm had been dissolved, a certificate could be legally filed against the firm in its own name as the assessment had been made against the firm when it was a going concern. Dr. Guptas argument in this connection was that the assessment having been made against the firm which could be assessed as a separate assessable unit and the demand notice having been served upon the firm it was not open the Certificate Officer to attach the personal goods of one of the ex-partner of the firm. We must, therefore, proceed by holding that the certificates which had been signed and filed by the Certificate Officer on the requisition of the Income Tax Officer were good and valid certificates so far as the firm was concerned. Whether these

certificates were executable against the plaintiff respondent personally or individually is a matter which now requires our consideration.

In the above connection Mr. Meyer argued that the partners of the dissolved firm were bound by principles of general law to pay the dues of the firm. He also drew our attention to section 44 of the Income Tax Act in this connection. That section runs in the following terms :

"44. Where any business, profession or vocation carried on by a firm or association of persons has been discontinued or where an association of person is dissolved, every person who was at the time of such discontinuance or dissolution a partner of such firm or a member of such association shall, in respect of the income, profits and gains of the firm or association, be jointly and severally liable to assessment under Chapter IV and for the amount of tax payable and all provisions of Chapter IV shall, so far as may be, apply to any such assessment."

Mr. Meyer argued that this section provides for recovering Income Tax from partners even after the dissolution of a firm after assessing them jointly and severally in respect of the income, profits and gains of the firm. Mr. Meyer contended that the liability of the firm to pay Income Tax does not come to an end by its mere dissolution or discontinuance. The liability remains as the liability of the partners. Mr. Meyer further submitted in this connection that if after the dissolution or discontinuance of a firm the Income Tax can be recovered from the ex-partners jointly or severally, then there is no reason why such taxes which were payable by the firm before its dissolution would not be recoverable from the partners. The Legislature certainly never intended that the taxes payable by a firm would cease to be recoverable upon its dissolution.

Dr. Guptas argument in the above connection was that Income Tax is certainly recoverable from the partners after the dissolution of the firm, but before such tax is sought to be recovered from the partners there should be an assessment against them under Chapter IV and a demand notice should be issued to them u/s 29 of the Income Tax Act. In this connection Dr. Gupta drew our attention to a Privy Council case, *Doorga Prosad Chamaria v. Secretary of State*. In particular, he drew our attention to some observations made by their Lordships of the Judicial Committee at page 289 of the report. It has been observed there that Income Tax is calculated and assessed by reference to the income of the assessee for the given year, but it is due when demand is made u/s 29 and section 45. It becomes a debt due to the Crown, but not for any particular period. Dr. Gupta argued that in the case with which we are dealing, no assessment was made against the plaintiff respondent and neither was any demand notice served upon him in his individual capacity. On the strength of these facts Dr. Gupta submitted that although the plaintiff respondent was a partner of the firm the taxes due by the firm were not recoverable from him in his individual capacity.

We have carefully considered the arguments submitted by Mr. Meyer on behalf of the appellant and by Dr. Gupta on behalf of the respondents. We are unable to accept Dr. Gupta's contention that in no circumstances is a partner of a firm liable to pay the Income Tax levied upon the firm itself without fresh assessment. If that argument were to be accepted then there would be two assessments for the same period. In this particular case the firm had been assessed for those Income Tax years to which we have already referred. The firm has been dissolved. But if Dr. Gupta's contention were to succeed then Income Tax for those years would be recoverable against the plaintiff respondent only after fresh assessment. We are unable to see how that can be done under the law.

The real question which calls for our determination in this appeal is whether the respondent as a partner of the firm was liable for the taxes due from the firm. Mr. Meyer contended that on general principles of law the taxes are recoverable from the respondent having been a partner of the firm. In this connection he drew our attention to clause (b) of sub-rule (1) of rule 50 of Order XXI of the Code of Civil Procedure. That sub-rule provides for the execution of a decree against a partner which has been passed against a firm. Relying on this provision of law Mr. Meyer argued that the same principle should apply to a case of execution of a certificate under the Public Demands Recovery Act. Mr. Meyer further referred to some comments occurring at page 272 of Lindley on Partnership eleventh edition. It has been observed there that by the common law of England every member of an ordinary partnership is liable to the utmost farthing of his property for the debts and engagements of the firm. Mr. Meyer submitted that there is nothing in the Partnership Act which would prevent the creditor of a firm from realising his dues from the assets of a partner of the firm. Regarding the provisions of the CPC to which we have already referred and to the comments contained in the treatise mentioned above, we are of opinion that the creditor of a firm is entitled to realise his dues from the partners of the firm where a firm has been dissolved.

We, therefore, hold that under the certificates mentioned above the debts in question are recoverable from the plaintiff respondent. This can, however, be done only after suitable amendments of the certificates to which we shall presently refer.

Dr. Gupta made a further submission before us that it could not be said in any way that his client was the certificate debtor as defined in clause (1) of section 3 of the Public Demands Recovery Act and that being so, on execution could be levied against him under the certificates. The word "certificate debtor" has been defined in the above section as follows :

"3. In this Act, unless there is anything repugnant in the subject or context, -

(1) certificate debtor means the person named as debtor in a certificate filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer."

We agree with Dr. Gupta to this extent that the certificate as prepared and filed are not executable against the plaintiff respondent. We have already held that the liability of the dissolved firm to pay the certificate debts is also the liability of the plaintiff respondent. The debts in question however, can be recovered from him only after his name has been mentioned in the certificates as a certificate debtor along with the firm. There is nothing in law which is opposed to such addition of the name of the respondent because, according to the definition of the word "certificate-debtor", it includes "any person whose name is substituted or added as debtor by the Certificate Officer". In our opinion the liability of the plaintiff respondent to pay the arrears of Income Tax being the same as the liability of the firm, the certificates in question can be executed against him after the addition of his name as a certificate debtor and after service of notice upon him u/s 7 of the Public Demands Recovery Act. Unless and until that is done the certificates will not be executable against the plaintiff respondent.

In the result, we summarise our conclusions in the following terms :

The certificates which were filed in the office of the Certificate Officer, Alipore, and which were impugned by the plaintiff as invalid and inoperative are good certificates. To that extent we reverse the decision of the trial court. We, however, hold that unless and until the certificates are amended on the lines mentioned above, and until and notice u/s 7 of the Public Demands Recovery Act is served upon the respondent in his personal capacity, the certificates cannot be executed against the respondent. To this extent we allow this appeal and modify the judgment and decree passed by the trial court.

In view of the circumstances of this case we direct that both parties will bear their own costs in this court and in the court below.

Let the records be sent down to the court concerned at an early date.

KAMALESH CHANDRA SEN, J. - I agree

Appeal allowed in part. Order of trial court varied.