
(1983) 10 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Regular First Appeal No. 449 of 1975

Union of India (UOI)

APPELLANT

Vs

Jagat Singh and Others

RESPONDENT

Date of Decision : 24-10-1983

Acts Referred:

Income Tax Act, 1961 — Section 222
Income Tax Rules, 1962 — Rule 11 , 11(6)
Limitation Act, 1908 — Article 14
Limitation Act, 1963 — Article 100, 112, 58
Redemption of Mortgages (Punjab) Act, 1913 — Section 12

Citation : (1984) 2 ILR (P&H) 89

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; Mohan Singh Batta and Ran Singh for Nos. 2 and 3, for the Respondent

Judgement

Rajendra Nath Mittal, J.—This judgment will dispose of R.F.A. Nos. 449 and 450 of 1975 which contain similar questions of law and fact. The facts in the judgment are being given from R.F.A. No. 449 of 1975.

2. Defendant No. 1 was assessed to Rs. 1,35,969 as income tax,--vide order dated 27th August, 1968 of the Income Tax Officer. The amount was not paid by him and, therefore, a certificate u/s 222 of the income tax Act, 1961 (hereinafter referred to as the Act), was sent by the income tax Officer to the Tax Recovery Officer, Amritsar, for realising the amount from him. The Tax Recovery Officer attached property No. 1797 /V-3 in execution of the said certificate. Smt. Sheela Wanti, Defendant No. 3, filed an objection petition against attachment and said therein that the property belonged to her. The Tax Recovery Officer accepted the objection,--vide order dated 16th September, 1970, and held that the property belonged to her and was, therefore, not liable to attachment and sale for recovery of the tax.

3. The Plaintiff has averred that the property, though purchased in the name of

Defendant No. 2, in fact, belonged to Defendant No. 1 as Defendant No. 2 had no source of income and the consideration for purchasing the property in her name proceeded from him. Defendant No. 2, while proceedings for recovery of the amount were pending, in order to defraud the Tax Recovery Officer, transferred the property to Defendant No. 3. It is further alleged that the Tax-Recovery Officer accepted the objection on flimsy grounds and did not take into consideration the real facts. Consequently, the Plaintiff instituted a suit for declaration to the effect that the house belonged to Defendant No. 1, that Defendant No. 3 was only a Benamidar and that the property was liable for recovery of income tax amounting to Rs. 1,35,969, along with interest thereon.

4. The suit was contested by Defendant No. 3 who inter alia pleaded that it was not within limitation. The trial Court framed the following preliminary issue:

Whether the suit is time-barred ?" It held that Article 100 of the Limitation Act, 1963 was applicable which prescribed a period of one year. It further held that as the suit had been filed beyond a period of one year, it was barred by limitation. Accordingly, the suit was dismissed on that short ground. The Plaintiff has come up in appeal against the judgment of the trial Court to this Court.

5. The first contention of Mr. Ashok Bhan, learned Counsel for the Appellant, is that the suit is governed by Article 58 and not by Article 100 of the Limitation Act. He submits that the Plaintiff has not sought a declaration that the order of the Tax Recovery Officer was illegal and void and consequently the suit was not for setting aside his order. In support of his contention, he places reliance on Gurbachan Singh and Others Vs. Rajinder Kaur and Another, .

6. I have heard the learned Counsel at a considerable length but regret my inability to accept the contention. Section 222 of the Act provides that when an Assessee is in default in making a payment of tax, the income Tax Officer may forward to the Tax Recovery Officer a certificate under his signature specifying the amount of arrears due from the Assessee, and the Tax Recovery Officer on receipt of such certificate, shall proceed to recover from such Assessee the amount specified there in accordance with the rules laid down in the Second Schedule. Rule 11 of the Second Schedule inter alia says that where any objection is made to the attachment or sale of any property in execution of a certificate on. the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the objection. It further provides that after hearing the objection he may make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale. Sub-rule (6) of Rule 11 provides that where 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, the order of the Tax Recovery Officer shall be conclusive.

7. From a reading of the above rule, it is evident that the order passed by the Tax Recovery Officer is final till it is challenged and set aside by a civil Court. If a

suit is instituted in a civil Court for declaration that the property was or was not liable to attachment and sale, the suit includes the prayer to set aside order of the Tax Recovery Officer, though no such prayer is made in the plaint. Article 100 of the Limitation Act inter alia provides that to alter or set aside any decision or order of a civil Court in any proceeding other than a suit or any act or order of an officer of Government in his official capacity, a suit can be filed within one year from the date of the final order. Article 58 is the general article which provides that a suit for declaration can be filed within three years when the right to sue first accrues. It is well-settled that when a case falls under a specific article of Limitation Act it is that article which will be applicable and not the general article. As already observed above, in the present case, the relief claimed is against the order of the Tax Recovery Officer and, therefore, in my view, Article 100 will be applicable. In the above view, I am fortified by the observations of a Full Bench of Lahore High Court in AIR 1934 384 (Lahore) . In that case, the order of the Collector under the Redemption of Mortgages (Punjab) Act, 1913, was challenged in a civil Court. The question arose whether it was governed by Article 14 of the Limitation Act, 1908, which is equivalent to Article 100 of the New Act. It was observed by Tek Chand, J., speaking for the Court, that if it was necessary for a Plaintiff to get rid of an order made by an officer of the Government which stood in his way before he could obtain a certain relief and in order to obtain that relief he did not expressly ask for the setting aside of the order but merely for a declaratory decree still the suit should be deemed to be one to set aside an order falling within the ambit of Article 14. The observations were made in a suit u/s 12 of the Redemption of Mortgages (Punjab) Act, 1913; instituted by a person aggrieved from an order passed by the Collector. The present suit is similar to that which was before the Full Bench and, therefore, the above observations fully apply to it. Consequently, I reject the submission of Mr. Ashok Bhan. Gurbachan Singh's case (supra) is also of no help to him.

8. His next submission is that the suits by the Central Government are governed by Article 112, which provides a limitation of 30 years and, therefore, the suit is within limitation.

9. I find substance in the above submission of the learned Counsel. Article 112 provides that a suit by or on behalf of the Central Government or State Governments can be filed within a period of thirty years from the date when the period of limitation would begin to run under the Act against a like suit by a private person. From a reading of the Article, it is evident that the suits by the Central Government are governed by Article 112 which provides a limitation of thirty years in all suits instead of the one provided in other articles. The purpose for providing a longer period of limitation for the Government appears to be that, in case its claim becomes barred by limitation, the loss falls on the community in general and the benefit is derived by an individual. The Plaintiff, being the Central Government, is entitled to the benefit of the said Article. Consequently, I am of the opinion that the suit is within limitation.

10. No other point was raised in the other appeal.

11. For the aforesaid reasons. I accept the appeals, set aside the judgments and decrees of the trial Court and remand the cases to it for deciding the same on merits. The parties are directed to appear before the trial Court on 28th November. 1983.