

(1975) 04 DEL CK 0008

In the Delhi High Court

Case No : Regular Second Appeal No. 216 of 1973

VINOD PERSHAD AND OTHERS

APPELLANT

Vs

STATE OF MADHYA PRADESH.

RESPONDENT

Date of Decision : 25-04-1975

Acts Referred:

Citation : (1976) 5 CTR 111(1)

Hon'ble Judges : B. C. Misra, J

Bench : Division Bench

Judgement

B. C. Misra, J. - This second appeal u/s 100 of the CPC has been filed by Vinod Parshad, his minor son, minor daughter and his wife (all plaintiffs). It is directed against the appellate judgment and decree of Mr. S. R. Goel. Additional District Judge, dated 28th May 1973, by which he has dismissed the appeal and affirmed the judgment and decree of Mr. Gopal Krishna, Sub-Judge, III Class, Delhi dated 27th May, 1972, and finally the suit of the plaintiff appellants has been dismissed as being outside the jurisdiction of the Civil Court. The respondent in the appeal before me are the State of Madhya Pradesh the Collector, Indore and the Collector, Delhi, arrayed as Nos. 1,2 and 5 respectively.

2. The material facts of the case are that Vinod Motors Private Limited. Indore, was a private limited company of which Vinod Prasad, first appellant before me was a share-holder. The said limited company became liable to pay sales tax to the State of Madhya Pradesh. The company did not pay the same and obtained time and as a consideration, Vinod Parshad stood surely for payment of the arrears of sales tax. He also gave an affidavit that the property in dispute in the suit (giving rise to this appeal) situated in Katra Neel, Chandni Chowk, Delhi, were his assets and belonged to him and that they had not been sold, mortgaged transferred or gifted to any body in any way or encumbered in any other manner and that the said property would be a security with a view to discharge the arrears of sales tax which could be recoverable as arrears of land revenue.

3. The limited company is said to have been wound up. The sales-tax authorities

of Madhya Pradesh tried to realise the amount of tax as arrears of land revenue from the aforesaid property of the first appellant. The authorities there issued a certificate under the Revenue Recovery Act to the Collector of Delhi, asking him to recover Government dues amounting to Rs. 5,23,161.40 from the appellant as arrears of land revenue. The Collector, Delhi, sought to realise the same and attached the property in dispute. The first appellant along with his wife and minor daughter and son, instituted the suit giving rise to this appeal on the ground that the tax in dispute was due from the aforesaid private limited company and not from the plaintiffs and that the plaintiffs were owners of the property in dispute and so the Collector, Delhi, and the other authorities be restrained from Realizing the amount from the aforesaid property of the appellants. The State of Madhya Pradesh and the Collector, Indore, resisted the suit on various grounds, including the ground that the civil court had no jurisdiction to try the suit and the court at Delhi had no territorial jurisdiction over it. On the pleadings of the parties, two preliminary issues were framed :-

"1. Whether the civil court has jurisdiction to try this suit ?

2. Whether this court has no territorial jurisdiction to try this suit ?"

The court of first instance tries both issues together and held that the suit was barred by Section 257(e) of the Madhya Pradesh Land Revenue Code and that the Additional Collector under the Madhya Pradesh Land Revenue Code had the authority and jurisdiction to issue recovery certificate and that amount could be recovered u/s 23(6) of the Madhya Pradesh General Sales Tax Act, 1958. The learned Sub-Judge, Therefore, held that the civil court had no jurisdiction and if its jurisdiction was barred, it could not have territorial jurisdiction and so dismissed the suit.

4. The plaintiffs appealed to the Distt. Court in Delhi. The learned Additional Distt. Judge agreed with the finding that the suit was barred but he relied upon Section 37 of the Madhya Pradesh General Sales Tax Act, 1952 and dismissed the appeal. Mr. S. L. Bhatia, learned counsel for the appellants, has assailed the finding of the lower appellate court in this second appeal and has contended that Section 37 of the said relied upon by the court below has no applications in the facts and circumstances of the case.

5. Section 37 of the Madhya Pradesh General Sales Tax Act, 1958, reads as follows :-

"37. Bar to certain proceedings. - Save as provided in Section 44, no assessment order or the determination liability to pay any tax or penalty or the recovery of any tax or penalty made under this Act or the rules made there under by the Commissioner or any person appointed u/s 3 to assist him shall be called into question in any civil court and save as provided in Section 38 and 39 no appeal or application for revision shall lie against any such assessment or order."

I agree with the learned counsel for the appellants that the section has no

application to the facts of this case. The aforesaid provision of law really affords a finally to the assessment order or the determination of the liability to pay the tax and prohibits their being called in question in any civil court or otherwise than in accordance with the provisions of Sections 38,39 and 44 of the Act. Clearly, this provision has reference to the assessment of the tax on the dealer, viz. Vinod Motors Private Limited in this case. It does attract the case of the surety for payment of the tax since the surety is not entitled to challenge the assessment or the initial liability of the dealer nor can he file an appeal or revision against the said order. Reference to the said provision of law by the lower appellate court was, Therefore, unjustified.

6. This, however, does not put an end to the matter. I have given ample opportunities to the counsel for parties to argue the appeal and have heard them at length. The correct legal position is this. The Sales-tax due under the Madhya Pradesh General Sales Tax Act, 1958, is inter alias recoverable as arrears of land revenue. Section 22(5) of the said Act reads as follows :-

"(5) If any amount of tax or any other amount due under this Act, or any of the Acts repealed by Section 52 remains unpaid on the expiry of the period for the payment thereof by or under this Act or on the expiry of the period specified in any notice of demand or order issued or made under this Act or the rules made there under for the payment thereof, shall be recoverable as an arrear of land revenue."

Section 23(6) also specifically directs the recovery as arrears of land revenue. Consequently, the legal processes for recovery of arrears of land revenue are applicable for recovery of arrears of sales tax. Chapter XI of the Madhya Pradesh Land Revenue Code, 1959, prescribes the procedure for its recovery. Section 147 of the Code provides that arrears of land revenue may be recovered by any one or more of the following processes, i.e., by attachment and sale of any other immovable property belonging to the defaulter. Section 155 (c) provides that all sums declared by the Code or any other enactment for the time being in force to be recoverable in the same manner as an arrear of land revenue would be governed by the provisions of Chapter XI in the same manner as an arrear of land revenue.

Section 156 of the said Code reads as follows :-

156. Recovery of moneys from surety - Every person who may have become a surety under any of the provisions of this Code or under any other enactment or any grant, lease or contract whereunder the sum secured is recoverable from the principal as an arrear of land revenue shall, on failure to pay the amount or any portion thereof which he may have become liable to pay under the terms of his security bond, be liable to be proceeded against under the provisions of this Code in the same manner as for an arrear of land revenue."

This shows that the arrears of land revenue, if any, may be recovered from the surety as if he was the defaulter. The surety is consequently placed at par with

the defaulter for purposes of recovery of arrears of land revenue and the same machinery can be set in motion, as would apply to the principal defaulter. In case the defaulter should reside or has properties outside the jurisdiction of the Collector, resource will have to be had to the provisions contained in the statute known as Revenue Recovery Act, 1 of 1890. Section 2(3) of the said Act defines defaulter as a person from whom an arrear of land revenue or a sum recoverable as an arrear of land revenue is due and includes a person who is responsible as surety for the payment of any such arrear of sum. Section 3(2) provides that the certificate signed by the Collector in making it or by an officer shall be conclusive proof of the matters therein stated. This has accorded a finality to the recovery certificate. Sub-section (3) of Section 3 of the said Act reads as follows :

"The Collector of the other district shall, on receiving the certificate proceed to recover the amount stated therein as if it were an arrear of land revenue which had accrued in his own district."

This provision authorises the Collector to apply the provisions of the Land Revenue Recovery Law operating in his area for recovery of the amount certified by another Collector. Consequently the arrears of sales tax which were payable in Madhya Pradesh under the Madhya Pradesh General Sales Tax Act can on receipt of the recovery certificate be recovered by the Collector in Delhi and he is empowered and authorised to apply the provisions of law, as if the amount had become due in his own District.

This would attract the provisions of the Punjab Land Revenue Act, 1887, which operates in the Union Territory of Delhi. At this stage, it may be convenient to mention that the State of Delhi, when it was in existence, in December, 1954 had placed on the statute book an Act known as Delhi Land Revenue Act 12 of 1954 and this Act purported to repeal the Punjab Land Revenue Act. But the Delhi Act has not yet been brought in force, with the result the Punjab Land Revenue Act still continues to apply. We are Therefore, to refer to the provisions of the Punjab Act, as applied to Delhi. Sec. 66 of the Punjab Act declares the certificate to be conclusive proof. Section 67 provides that arrears of land revenue may be recovered by any one or more of processes mentioned therein and they include (vide clause (h)) proceeding against other immovable property of defaulter. The provisions of the said Act contain detailed provisions for proceeding against the immovable property of the defaulter, for their attachment and sale and for setting aside the sale on the grounds specified in the statute.

7. The scheme of the Revenue Act is complete and the Collector has full jurisdiction to attach and sell the property of the defaulting surety and the assessed. In view of the rule of law laid down by the Supreme Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, ; *the State of West Bengal vs. The Indian Iron and Steel Co. Ltd.*, AIR 1973 SC 1298 and *Hatti Vs. Sunder Singh*, , this would exclude the jurisdiction of the civil court to interfere in such a matter where a special complete machinery has been provided.

8. The matter, however, has not been left at large Sec. 158 (1) and (2) of the Punjab Land Revenue Act expressly exclude the jurisdiction of the civil court in such matters. The said provisions read as follows :-

"158. Exclusive of the jurisdiction of Civil Courts in matters within the jurisdiction of Revenue Officers. -Except as otherwise provided by this Act. -

(1) a Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer is empowered by this Act to dispose of or take cognizance of the manner in which the State Government or any revenue Officer exercises any powers vested in it or him by or under this Act; and in particular -

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely, -

(xiv) any claim connected with, or organising with, or arising out of the collection by the Government; or the enforcement by the Government of any process for recovery of land revenue or any sum recoverable as an arrear of land revenue.

It is, Therefore, obvious that in respect of attachment or sale of the immovable property to recover arrears of land revenue by the Collector in Delhi the jurisdiction exclusively vests in the revenue authorities and the jurisdiction of the civil court is clearly barred. The courts below were, Therefore, justified in holding that they did not have jurisdiction to entertain the suit.

9. Before I part with this case, notice must be taken of two interesting provision, which in such proceedings give jurisdiction to the civil court. Section 78 of the Punjab Land Revenue Act reads as follows :-

"Remedies open to person denying his liability for an arrear. - (1) Notwithstanding any thing in Section 66, when proceedings are taken under this Act for the recovery of an arrear the person against whom the proceedings are taken, may if he denies his liability for arrear or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

(2) A suit under sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the district in which the arrear or some part thereof accrued is situate."

The Revenue Recovery Act also contains a similar provision, Section 4 of the Revenue Recovery Act, 1 of 1890, reads as follows :-

"4, (1) When proceedings are taken against a person under the foregoing section for the recovery of an amount stated in a certificate, that person may, if he denies his liability to pay the amount or any part thereof and pays the same under protest made in writing at the time of payment and signed by him or his agent, institute a suit for the repayment of the amount or the part thereof so paid.

(2) A suit under sub-section (1) must be instituted in Civil Court having jurisdiction in the local area in which the office of the Collector who made the certificate is situate, and the suit shall be determined in accordance with the law in force at the place where the arrears accrued or the liability for the payment of the sum arose.

The parties have Therefore, been given an express right institute a suit in the civil court challenging their liability. But this suit is a statutory suit. The right to institute the suit arises when a party against whom proceedings for recovery are initiated pays the amount under protest denying the liability and then he can institute a suit in a civil court for its recovery. This kind of suit has been specially provided by the revenue law and can certainly be availed of by the plaintiff-appellants if they so desire but the condition precedent for institution of such suit is payment of the amount under protest. Apart from such suit the jurisdiction of the civil court has completely been taken away under the law.

10. Another feature of the suit giving to this appeal is that the suit has been instituted not only by strangers to the claim for recovery of sales tax, who allege that they are owner of the properties, which are not liable to be proceeded against. The parties to the suit include Vinod Parshad, first appellant who was the share-holder of Vinod Motors Pvt. Ltd., the dealer. He stood surety before the sales tax authorities for payment of the amount due by the said company and who also filed an affidavit before the authorities asserting that the properties in dispute were his properties without any encumbrances or sharer. This kind of suit is not only barred by the provisions of law, but is mala fide and is abuse of the process of the court.

11. Accordingly, I affirm, though on different ground, the conclusion of the lower appellate court that the suit of the plaintiffs could not be entertained by the civil court. With regard to the second issue, regarding territorial jurisdiction, it is really not necessary to go into the question. However, should the suit be held as entertainable by the civil court then obviously the territorial jurisdiction would rest with the courts at Delhi, since the immovable properties, which are sought to be attached and sold and are subject-matter of the suit, are situated in Delhi.

12. As a result, I dismiss the appeal. But in view of the fact that I have dismissed the appeal on a reasoning other than the one adopted by the lower appellate court, the parties are left to bear their own costs.