

(1932) 08 MAD CK 0031
In the Madras High Court

V.S.R.M. Chockalingam Chettiar and Another

APPELLANT

Vs

Taluk Board

RESPONDENT

Date of Decision : 15-08-1932

Acts Referred:

Citation : AIR 1933 Mad 22 : 140 Ind. Cas. 273 : (1932) 36 LW 659

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—Plaintiffs are the appellants. They filed a suit against the Taluk Board of Devakotta for a refund of Rs. 254-9-9 being

the profession-tax illegally collected for the year 1923-24, by the defendant, and for an injunction restraining the defendant from assessing them to

profession-tax on similar grounds for the succeeding years, 1924-25 and 1925-26. A decree for the refund of the money was passed by the first

Court in plaintiff's favour, but the lower appellate Court set aside that decree, and dismissed the plaintiff's suit: Hence this second appeal.

2. A preliminary objection is raised by Mr. Rajah Ayyar for the respondent, that no second appeal lies in this case. If this is a suit cognizable by a

Small Cause Court, no second appeal will lie, as the amount or value of the-subject-matter of the suit does not exceed Rs. 500 (Section 102, Civil

P. C). It is also clear that a suit to obtain an injunction is exempted from the jurisdiction of a Small Cause Court. The present suit is for the

recovery of a sum (less than Rs. 500) alleged to have been collected as profession-tax for a particular year, and also for an injunction against the

Taluk Board in respect of levying this tax for the succeeding two years. The relief by way of injunction as claimed in the plaint is not merely

prefatory or ancillary to the return of the money, as in the case reported in Raman Chetti and Others Vs. The Taluk Board of Sivaganga, nor can it

be said that all the reliefs which the plaintiffs seek in respect of the plaintiff mentioned years could be obtained, without asking for an injunction as in

the case reported in Ramachandra Ayyar v. Noorulla Sahib (1907) 30 Mad 101. In the present suit the plaintiffs want to get a refund of the sum

paid for one year, and seek to prevent the defendant from levying this tax for the next two years, by getting, an injunction. The latter relief claimed

is an independent one, and not subservient to the refund of the money asked for. The aforesaid decisions relied on by Mr. Rajah Ayyar, have no

application.

3. It is however contended that though this prayer is treated as an additional prayer it comes within the purview of the decision of the Allahabad

High Court reported in Harbans Deo Rai Vs. Raj Kumar Rai, . The case dealt with in that decision has no analogy to the present. In a suit for

money the plaintiff asked for an injunction restraining the defendant from transferring his immovables, and it was found that the addition of this

absurd prayer was only a dodge, to oust the jurisdiction of the Small Cause Court. In such an extreme case, the learned Judges thought fit to

discard that prayer as a fictitious one. There is no reason to brand the prayer for injunction in this suit, in that manner. It seems to be a bona fide

prayer, without which the plaintiffs could not avert the levy of this tax for those years. As the plaint stands, it cannot be said, that all the reliefs

asked for can be given by a Small Cause Court. I think this suit is not cognizable by a Small Cause Court. The preliminary objection is overruled.

4. On the merits the question has to be decided on a proper construction of Section 93, Madras Local Boards Act 14 of 1920. It is common

ground that the plaintiffs are residents of Poolankurichi (which is within the limits of the Taluk Board area), but do not carry on any money lending

business there. The money lending business in respect of which the profession-tax in question was levied, is actually carried on in Rangoon. It is not

contended that this tax is leviable under the first category mentioned in the section. The second category of cases is covered by the following

provision, viz.:

Every person who within such area and for the period laid down in Section 96 is

in receipt of any income from money lending.

5. We have to see whether the plaintiffs were assessable to profession-tax for the year 1923-24, in respect of the income of the money lending

business at Rangoon, viz., Rs. 25,000. The contention of the appellants is, that as no portion of that income was actually received by them at

Poolankurichi, the place of their residence within the area of their Taluk Board, Devakotta, no profession-tax was "payable to that Board.

Whereas the "respondent"s ""contention seems to be, that by reason, of their residence within the area of the Taluk Board, they are liable to pay

this tax to the Board, though the income accrue to them at Rangoon and was not actually received at Poolankurichi. The words in the section seem

to me to be plain and unambiguous. He who within the area of the Taluk Board is in receipt of income from money lending is liable to pay the tax.

The actual receipt of the income within the limits of that area must be shown. It is not enough to show his residence alone within that area. The

authorities are clear on this point. With reference to a similar provision in Section 8(1), Income Tax Act 7 of 1918, it was held that though a person

is a resident in British India, owning a money lending business carried on for him by his agents outside British India, he is not liable to be taxed,

where the income derived from that business is not remitted to British India: Board of Revenue, Madras v. Ramanathan Chetty AIR 1920 Mad

344.

6. The aforesaid section relates to all income from whatever source it is derived, if it accrues or arises or is received in British India. In construing

that section, proof of actual receipt of the income within British India was held to be necessary for levying the Income Tax under the Act. The same

view was upheld in a later Full Bench decision of this Court in The Secretary, Board of Revenue (Income Tax) Vs. Ripon Press and Sugar Mills

Company, Ltd., and the decision in Aurangabad Mills, Ltd., In re AIR 1921 Bom 159 was also followed. These rulings are applicable to the

present case by way of analogy. But there is a recent decision by a Division Bench of our High Court reported in Perianan v. Devakotta Taluk

Board AIR 1932 Mad. 509, which is exactly in point. In that case the person had a money lending business at Rangoon, but was a resident within

the limits of the Taluk Board of Devakotta. In construing Section 93, Madras

Local Boards Act 14 of 1920, Waller, J., says that the plain meaning of the section seems, to be that that part of his income is chargeable which he actually receives within the area of the Taluk Board. Same is the view of Jackson, J., in the decision reported in Raman Chetti and Others Vs. The Taluk Board of Sivaganga, .

7. Some stress was placed by Mr. Rajah Ayyar on the decision in Mahadeva Sastri v. Municipal Council, Kumbakonam (1913) 21 IC 847. That

decision was with reference to Section 53, District Municipalities Act 4 of 1884, whose wording is different. Under that section, if the holder of

any office or appointment (specified) resides within the Municipal area he is made liable to Pay the profession-tax, A pensioner residing in that

area, is the holder of an office. Though he drew his pension out-side-that area, he would still come within the purview of that section. This decision

has no application to the present case. (The judgment then considered the evidence and finding that the income was not received within the area of

the Board concluded.) I therefore hold that u/s 93, the plaintiffs were not assessable to profession-tax for 1923-24, as no portion of the income of

the Rangoon money lending business was actually received by them within the aforesaid Taluk Board area. In the result the appeal is allowed, and

the decree of the District Munsif is restored with costs here and in the lower appellate Court.