

Union of India

Vs

Somasundaram Mills (P) Ltd. and Another

Civil Appeal No. 651 of 1971

(O. Chinnappa Reddy, R. B. Misra JJ)

05.02.1985

JUDGMENT

O. CHINNAPPA REDDY, J. -

1. The Union of India is the appellant before us. In respect of income tax due from respondents 1 and 2 for several years, certificate under Section 46(2) of the Income Tax Act were issued to the Collector of Coimbatore for the recovery of the tax as arrears under the Revenue Recovery Act. In his turn the Collector issued prohibitory orders on March 30, 1957 against the transfer of shares owned by the defaulting assesseees in Kaleeswar Mills Ltd. and, further, on June 29, 1957 directed the Tehsildar to take immediate action to seize the attached shares and sell them by public auction. The Tehsildar however did not take any action in the matter. The third respondent, a creditor of respondents 1 and 2, meanwhile, obtained a simple money decree against respondents 1 and 2, attached their shares in Kaleeswar Mills Ltd. and brought them to sale. The shares were sold on several dates in December 1958. We may mention here that the attachment by the decree holder was itself subsequent to the prohibitory order by the Collector. As we said earlier the Tehsildar really slept over the matter and it was in 1961 that he woke up and thereafter a suit was filed by the Union of India to recover the sum of Rs. 20,245 which had been taken away by the third respondent out of sale proceeds towards his decree. The suit was resisted by the third respondent. The trial court decreed the suit but the judgment of the trial court was reversed by the High Court, which dismissed the suit. Hence this appeal. The simple submission of the learned counsel for the appellant was that the State had a priority over other creditors and that the attachment by the Collector being earlier in point of time than the attachment by the executing court, the Union of India was entitled to recover the sale proceeds from the third respondent who had taken away the amount. The High Court appears to have thought that the Government could exercise its claim to priority only if the amount was still available with the executing court and not otherwise. In the present case, the High Court thought, as the amount had already been taken away by the third respondent, the Government could no longer exercise its right to priority. It is difficult to agree with this proposition. It is a general principle of law that debts due to the State are entitled to priority over all other debts. If a decree holder brings a judgment-debtor's property to sale and the sale proceeds are lying in deposit in court, the State may, even without prior attachment exercise its right to priority by making an application to the executing court for payment out. If however, the State does not choose to apply to the court for payment of its dues from the amount lying in deposit in the court but allows the amount to be taken away by some other attaching decree holder, the State cannot thereafter make an application for payment of its dues from the sale proceeds since there is no amount left with the court to be paid to the State. However, if the State had already effected an attachment of the property which was sold even before its sale, the State would be entitled to recover the sale proceeds from whoever has received the amount from the court by filing a suit. Section 73(3) read with 73(2) CPC contemplates

such a relief being granted in a suit. The High Court relied on the decision of the Madras High Court in *Manickam Chettiar v. ITO* ((1938) 6 ITR 180 : AIR 1938 Mad 360 : ILR 1938 Mad 744 : (1938) 1 Mad LJ 351) as supporting its conclusion. We, however, find nothing in the decision which supports the case of the respondent. What was decided in that case was that it was not necessary for the Crown to have obtained a decree before it could apply to the court for payment out of amounts brought to court by the sale of property in execution of a simple money decree obtained by some other attaching decree holder. We fail to see how that case can possibly help the respondent. As pointed out by Vivian Bose, J. in *Zumberlal Chhotelal Agarwal v. Sitaram* (AIR 1937 Nag 80 : ILR 1937 Nag 219 : 171 IC 371) the prior attachment fastens itself to the proceeds of a sale pursuant to the later attachment. The prior attachment effected by the State similarly fastens itself to the sale proceeds taken away by the decree holder. The State is, therefore, entitled to recover the amount from the decree holder who has taken away the amount. The result therefore, is the appeal is allowed, the judgment of the High Court is set aside and that of the trial court is restored. No costs.

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