

ANDHRA PRADESH HIGH COURT

Chaganti Raghava Reddy

Vs

State of Andhra

(P Chandra Reddy, C.J. and Kumarayya, J.)

11.08.1958

JUDGMENT

P. Chandra Reddy, C.J.

1. These appeals are directed against the orders of the Subordinate Judge of Tenali directing payment of the moneys realised in execution of a decree obtained by the appellant against one Kondapaneni Krishnaiah to the Income-tax and Sales-tax Departments in preference to the appellant. The appellant who was one of the creditors of the said Kondapaneni Krishnaiah filed a Suit O. S. No. 103 of 1950 and obtained a decree. In execution of it, he brought the properties of the judgment-debtors to sale and a sum of Rs. 13012-8-0 being the sale-proceeds was deposited into court at that time. The Income-tax Department and the Sales-tax Authorities filed applications asking for payment of these amounts claiming priority. E. A. 455/54 was by the Income-tax Department claiming Rs. 55,334-3-0 due under Exs. A-1 to A-3, Exs. A-1 and A-2 being the assessment orders for the years 1947-48 and 1948-49 and Ex. A-3, order under Section 28(1)(b) of the Income-tax Act. The application of the Sales tax Department was E, A. 457 of 1954 claiming Rs. 7766-10-0.

2. There was opposition from the decree-holder on the ground that as regards the sons share there could be no priority and that the two Departments should only rank along with other simple creditors of the sons. It was further contended that the State was not entitled to ask for payment by mere application under Section 151 C. P. C. for obtaining a decree for a debt due to it. There was also another plea that the assessments being under Section 23 Clause 4 of the Income-tax Act to the best judgment and not being on merits, it was in the nature of a penalty arising out of the misdeeds of the second respondent and consequently the sons Were not liable to discharge such a debt of the father. These objections did not find favour with the trial court with the result that the applications of the Income-tax as well as Sale Tax Departments were allowed.

3. It is urged in support of this appeal brought by the said decree-holder that whatever, might be the position in regard to the liability of the assesses no priority could be claimed in regard to the

share of the sons in the joint family property. In our opinion, this is not a tenable contention. By virtue of the theory of pious obligation the interests of the son in the joint family property are answerable for the debts of the father. It is now well settled that the whole of the joint family assets are liable for the debts of the father by reason of this doctrine provided they were not incurred for illegal or immoral purposes. A decree obtained against the father can be executed against the interests of the sons in the joint family property if the debts are not immoral or illegal. It is argued for the respondents that the creditor of the father is equally that of the sons and has the same rights as against them: We cannot accept the proposition so broadly stated since it is subject to a qualification, namely, that there is no personal liability arising out of an obligation of the sons to pay off the father's debt on the basis of the theory of pious obligation. It follows that the priority which a State has got in regard to the payments extends to a liability founded on the principle of pious obligation if the debts are not vitiated by any illegality or immorality. This is on the assumption that the father alone is the assessee. In the view we have taken we do not think it necessary to send it back to the trial Court to ascertain whether the assessee was the joint family and whether the assessment was made on the basis of the father representing the whole family. The conclusion of the trial Court on this aspect of the matter cannot therefore be successfully assailed.

4. This leads us to the controversy whether the rights of the State have to be worked out in a suit or whether an application under Section 151 C. P. C. is competent for that purpose. In our opinion, the State can invoke the inherent powers of the Court under Section 151 and it is not essential that a decree should be obtained in order to claim prior payment. There is authority for this proposition in *Manickyam Chettiar v. Income-tax Officer, Madura*, 1938-6 ITR 180: (AIR 1938 Mad 360) (FB). We do not see any necessity for driving the State to institute a suit for realising the tax. This would mean an unnecessary waste of time and mulcting the opposing creditor with costs. The Court if bound to pass a decree in favour of the State, there being no possible defence in such a suit. As such there is no necessity for the State to bring a suit for the recovery of taxes due to it.

5. Another contention pressed upon us is that Section 46 of the Income Tax Act bars an application under Section 151 C. P. C. This argument is equally inadmissible. Section 46 of the Income-tax Act is only an enabling provision and is not exhaustive of the remedies available to the Department. The Income-tax Officer is not bound to resort to it but can avail himself of it only if he is inclined to do so. The existence of this provision does not preclude the Department from approaching the Court for realisation of the tax under Section 151 C. P. C. if moneys belonging to the assessee are available.

6. Lastly, Mr. Suryanarayana Murthy sought to raise a point of limitation. His argument is that since Section 46 of the Indian Income-tax Act prescribes a period of one year the application

ought to have been dismissed as these applications have been filed beyond one year. It is not necessary to consider the validity of this argument as this is raised for the first time here. This is not a pure question of law. We have no material as to whether the orders of assessment were subjected to appeals and reference under Section 66 of the Income-tax Act and when they became final. This requires investigation and there is no material upon which this could be disposed of.

7. In the result, the appeals are dismissed with costs.

8. The alternative C. R. Ps. are also dismissed without costs as the points involved are the same.

