

Sunil Kumar Vs. Ushadevi Radhakrishna Pathi and ors.

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Court : Chennai

Decided On : Jul-15-1996

Reported in : [1998]233ITR245(Mad)

Judge : M. Srinivasan and;S.S. Subramani, JJ.

Acts : Income-tax Act, 1961 - Sections 269UC

Appeal No. : W.A. No. 381 of 1996 and W.P. No. 4125 of 1995, (WP No. 4609 of 1995)

Appellant : Sunil Kumar;sakuntala Devi

Respondent : Ushadevi Radhakrishna Pathi and ors.;sunil Kumar and ors.

Advocate for Def. : S.V. Subramanian, Adv. for ;C. V. Rajan, ;Mrs. Nalini Chidambaram for ;M/s. Silambanan, ;A. Abdul Hammed and ;Mohan Parasaran, Advs.

Advocate for Pet/Ap. : A.C. Somayaji, Adv. for ;M/s. Aiyar and Dolia, Adv.

Judgement :

Srinivasan, J.

1. When the writ appeal came up before us on the earlier occasion, it was represented that it will be better, if the main writ petitions are taken up and

disposed of, as the writ appeal had arisen out of an interlocutory order made in WMP No. 6793 of 1995 in WP No. 4125 of 1995. Hence, we directed the writ appeal and the writ petitions posted together for hearing and now, we have heard counsel on both the sides in these petitions.

2. There was a partnership firm by name Suganchand and Co. which had three partners Radha Bai, Brij Mohan and Sunil Kumar. Radha Bai died on 21st September, 1987, leaving behind her, four daughters and three sons. The daughters are the petitioners in WP No. 4125 of 1995 and the sons are respondents Nos. 3 to 5 therein. On 8th March, 1993, Brij Mohan died leaving behind him, his wife, Sakuntala Devi, who is the petitioner in WP No. 4609 of 1995.

The surviving partner Sunil Kumar, who was continuing the business, entered into an agreement on 1st December, 1994, with Nathmull Jain for the sale of a property at No. 393, Tiruvottiyur High Road, Madras-19, comprising 1 acre and 21 cents for Rs. 52,50,000. The said Sunil Kumar is the second respondent in WP No. 4125 of 1995 and Nathmull Jain is the seventh respondent therein. The said Sunil Kumar filed Form No. 37-I before the Appropriate Authority under Chapter XX-C of the IT Act, 1961, for a certificate.

The heirs of Radha Bai filed a suit CS No. 778 of 1994 on the file of the Court of the Joint Civil Judge, Akola, Nagpur, Maharashtra State, on 19th December, 1994. The prayer in the suit was for permanent injunction restraining the first defendant from transferring the property to the second defendant or anybody else and for a mandatory injunction directing the first defendant to settle the accounts of the partnership firm. The plaintiffs prayed for an interlocutory order of injunction, but the Court did not grant the same. An appeal was filed against the said order in MCA No. 226 of 1994, in the Court of the District Judge, Akola. While so, on 20th March, 1995, the present Writ Petn. No. 4125 of 1995 was filed by the daughters of Radha Bai for the issue of a certiorarified mandamus calling for the records comprised in the proceedings of the Appropriate Authority dt. 17th March, 1995, and quash the same and consequently to direct the Appropriate Authority to reject the application filed under Form No. 37-I of the IT Act, seeking no objection under

Chapter XX-C of the Act for the sale of the property, referred to earlier. Obviously, the petitioners want to have the notice issued by the Appropriate Authority to the transferor and the transferee quashed. On 23rd March, 1995, a suit was filed by one of the sons of Radha Bai in the City Civil Court, Madras, on the file of the VIIIth Asstt. Judge, as OS No. 2404 of 1995. The third defendant in that suit is the Appropriate Authority under the IT Act. The relief prayed for in that suit is for an injunction restraining the defendants from dealing with the property in any manner and also for an injunction restraining the third defendant from proceeding further with the proceedings relating to the said property. It is represented that an interim order of injunction has been granted by the City Civil Court, Madras.

On 27th March, 1995, Writ Petn. No. 4609 of 1995 was filed by the wife of the late Brij Mohan for the same reliefs, as in the Writ Petn. No. 4125 of 1995, filed by the petitioners therein. It should be noted here that the parties in the three proceedings, viz., WP No. 4125 of 1995, OS No. 2404 of 1995 and WP No. 4609 of 1995 are all represented by the same person, viz., Mr. Suresh Kumar, as power of attorney agent.

Yet another suit has been filed on 20th April, 1995, by the same Suresh Kumar, as power of attorney agent of Ushadevi Radhakrishna Rathi, who is one of the daughters of Radha Bai in the Court of Subordinate Judge, Tiruvellore, and the same is registered as OS No. 83 of 1995. The prayer in the said suit is the same as the one in the suit filed at Akola. In that suit, an application for interim injunction was filed and the same was dismissed. An appeal was filed in this Court in CMA No. 1309 of 1995. A single judge of this Court passed an order on 3rd April, 1996, allowing the said appeal and remanding the interlocutory application for fresh disposal in accordance with law. The learned judge has directed the trial Court to find out whether the suppression of facts by the plaintiff in the plaint about the suit filed in the Court at Akola, was with an ulterior motive or bona fide one, before deciding the application for injunction. The learned judge has also directed the parties to maintain status quo till the disposal of the said application for injunction.

3. At the outset, it must be pointed out that the prayers in the writ petitions cannot be granted, as they are really directed to prevent a statutory authority from

functioning in accordance with the statute. The Appropriate Authority is to perform certain duties under Chapter XX-C of the IT Act, as and when it is approached with an application for consideration under the provisions of the said Act. The said application has to be considered by the Appropriate Authority in accordance with the provisions of the IT Act. The statute itself provides a time limit, within which the said application has to be disposed of by the said Authority.

4. It is contended before us that the petitioners in these writ petitions are entitled to the property in question and they are making a claim therefor and, therefore, the Appropriate Authority is bound to hear them before it ever passes any order in the application filed by Sunil Kumar, the second respondent in the writ petition. According to learned counsel, the Appropriate Authority is bound to come to at least a prima facie conclusion on the question of title to the property and the rival disputes as between the parties, before passing an order. It is, therefore, contended that the Appropriate Authority is bound to give an opportunity to the petitioners in these writ petitions, in the proceedings pending before it.

5. None of the contentions has any merit whatever in it. It has been laid down by the Supreme Court in *Appropriate Authority vs . Tanvi Trading & Credits (P) Ltd. : [1991]191ITR307(SC)* , that the Appropriate Authority acting under Chapter XX-C of the Act, cannot, and in fact has no right or power to go into the validity of and title of the transferor and the only power vested in the Appropriate Authority under the said Chapter is either to pass an order of acquisition of the property or issue a no objection certificate, as prayed for by the applicant before him. In view of the categorical pronouncement of the Supreme Court, the contention urged by the petitioners that they are bound to be heard by the Appropriate Authority has to fail.

6. There is no question of considering the claims of the petitioners in these writ petitions for the simple reason that the petitioners have already approached the civil Court in more than one place. It is now represented that the first suit filed in Akola has since been withdrawn and the appeal filed against the interlocutory order, has also been withdrawn. Even so, there are two other suits pending as at present, one suit in the Court of subordinate judge, Tiruvellore, and another in the city civil Court, Madras. As noticed already in the suit pending before the city civil

Court, Madras, an interlocutory order has been passed and the Appropriate Authority is a party thereto.

7. It is contended before us that the direction given in CMA No. 1309 of 1995 to the parties to maintain the status quo would bind the Appropriate Authority and it shall not proceed any further in the proceedings before it. Admittedly, the Appropriate Authority is not a party to the order in CMA, nor is he a party in the suit pending on the file of Sub-Court, Tiruvellore. If the party wants to get an order against the Appropriate Authority, it is for him to implead the Appropriate Authority as a party to the proceedings and seek appropriate direction against it. Without doing so, the parties cannot act on presumptions or implications.

8. In the circumstances, it is unnecessary for us to consider the question as to whether the petitioners in the writ petitions have any interest in the property or as contended by learned counsel for the respondents, their claim is a frivolous one. It is a matter to be decided only in the civil suits already instituted.

9. Our attention is drawn by learned counsel for the writ petitioner in WP No. 4609 of 1995 to a statement in paragraph 12 of the counter affidavit filed by the Appropriate Authority in the said writ petition. It is stated in that paragraph that 'It is always open to the petitioner to reply to the said notice and establish the right, if any, which she may have in the property in question and, hence, the writ petition itself is premature and is also not maintainable in law.' It is contended that the Appropriate Authority has admitted the right of the petitioner to appear before it and set out her case. According to learned counsel, it would mean that the Appropriate Authority has to consider prima facie the title of the writ petitioner or the absence of the entitlement of the first respondent in the writ petition to sell the property as an exclusive owner thereof. We are unable to accept this contention. Paragraph 7 of the same counter refers to the judgment of the Supreme Court (supra) and it is stated that the Appropriate Authority has no right whatever to consider the question of title. In the circumstances, it is obvious that the statement contained in paragraph 12 is made only due to inadvertence and a mistake and that cannot entitle the petitioner to contend against the ruling of the Supreme Court and claim that she has a right to argue the question of title before the

Appropriate Authority.

10. In the result, the prayers in the two writ petitions, WP Nos. 4125 and 4609 of 1995 cannot be granted and they are dismissed.

11. Consequently, the interlocutory order passed in WMP No. 6793 of 1995 ceases to be in force and, therefore, nothing survives in the writ appeal and it is dismissed as unnecessary. There will be, however, no order as to costs in these matters.

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