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Court : Chennai

Decided On : Mar-24-1962

Reported in : [1963]48ITR598(Mad)

Appeal No. : Appeal No. 62 of 1958

Appellant : Rangammal and Others

Respondent : Union of India and Others.

Judgement :

GANAPATIA PILLAI J. - Plaintiffs Nos. 3 to 6 in O. S. No. 26 of 1956, on the file of the Subordinate Judges Court, Erode, are the appellants before us. They along with four others brought the suit, out of which this appeal arises, for a declaration that the properties described as items Nos. 1 to 13 and 14 to 21 in the plaint schedule should not be either sold or could be sold if at all only subject to a charge in favour of the 6th plaintiff for realisation of income-tax arrears due from their elder brother, Ramaswami, and for a permanent injunction restraining the Union of India and the Collector of Coimbatore from bringing these properties to sale for realisation of the income-tax arrears due.

The facts are the following. One Palaniappa Mudaliar was doing hardware business in Erode from 1920. He prospered in the business and purchased many properties including all the properties now in suit. He died in 1937, leaving his widow, the 3rd plaintiff, and eight children. The first plaintiff was the fourth son of

Palaniappa and his sons are the 7th and 8th plaintiffs. It is said that the first two sons of Palaniappa were majors at the time of his death in 1934, and they started a lorry business, yarn business, tapioca business and also did contract work under military authorities and they also started a wirenail business. It is the contention of the plaintiffs that these businesses started by the brothers after the death of Palaniappa were their independent businesses and were not joint family businesses. However, it is admitted that throughout this period the business in hardware started by Palaniappa was being continued. On August 31, 1948, the income-tax authorities assessed the joint family to income-tax for the assessment years and in 1944-45, 1945-46 and 1946-47 and in September, 1948, they completed the assessment for the year 1947-48. All the businesses were treated by the income-tax authorities as joint family businesses and the status of the assessee was taken as undivided Hindu family. After bringing to sale some of the joint family properties and realising a portion of the arrears of income-tax, about a lakh of rupees still remained due and the income-tax authorities took steps to attach and bring to sale the suit items Nos. 1 to 13 and 14 to 21 for the realisation of the arrears. At this stage the present suit was brought by the plaintiffs for the relief above mentioned. In 1948, the plaintiffs filed O. S. No. 92 of 1948, on the file of the Subordinate Judge of Coimbatore against their major brothers for partition of the joint family estate. A preliminary decree was passed in that case on November 29, 1948, and by the final decree passed on April 12, 1949, items Nos. 1 to 13 of the present plaint were allotted to minor plaintiffs 4 to 6 and also plaintiffs 1 and 2 who were then minors. In addition by the final decree a sum of Rs. 4,000 was directed to be provided for the marriage expenses of the 6th plaintiff and a charge was given on all the properties items Nos. 1 to 21 for payment of this marriage provision.

Two main questions arose for consideration by the learned subordinate judge. The first was whether the business started by the adult members of the family after the death of Palaniappa Mudaliar were not joint family businesses and consequently, whether the assessments of income-tax on the profits of those businesses were not payable by the present plaintiffs. The second question was whether the suit as such was barred by section 67 of the Indian Income-tax Act. The learned judge answered both these questions against the appellants. Hence this appeal.

The same questions were also argued before us by the learned counsel for all the appellants. We find that there is no scope for finding that the new business started by the adult members of the family after the death of Palaniappa were started with any independent funds of those brothers. The evidence has been discussed by the learned subordinate judge in great detail and it is unnecessary for us to cover the same ground over again except to say that we agree with him that it has not been proved that the adult brothers had any independent source of money from which the capital necessary for the new businesses could have been drawn. The family was a trading family and the Hindu law makes a distinction in this regard between trading families and non-trading families. A manager of a trading family, it is well known, is entitled to start a new business so as to bind minor members of the family, the only restriction on his powers being that it should not be a speculative business. This wide power is not enjoyed by the manager of a non-trading family. It is not necessary for us to refer to all the decisions which establish this distinction between trading and non-trading families, except to refer to Kumbakonam Bank Ltd. v. Shanmugam Pillai. The question there was whether the principle laid down by the Benares Bank Ltd. case should be extended to trading families also. In answering this question in the negative the Bench reviewed the entire case law on the subject and pointed out the distinction between trading families and non-trading families in regard to this matter. The law being well settled, we must hold, agreeing with the subordinate judge, that the starting of new businesses like wire-nail business, lorry business, topioca business and yarn business by the adult members of the family was a venture which were entitled to start as joint family ventures with the result that the loss of those ventures were would be binding on the minor members of the family. It is nowhere suggested nor established by the evidence that any of these ventures were speculative in character. Counsel attempted to show that these new ventures had no connection with the hardware business conducted by the father, Palaniappa. Even here, he is not entirely correct. The wirenail business is certainly allied to the hardware business. Counsel was not able to point out any authority for the contention that the new businesses started by the manager of a trading family should be allied to the ancestral business. So far as we are aware, the only restriction imposed by the law is that the new business should not be a speculative one. We therefore agree with the

learned judge in the court below that the businesses the profits of which were taxed by the income-tax authorities were joint family businesses. The appellants could not therefore escape liability for paying the taxes due on the profits of such businesses.

On the second point, the statute itself is very clear. Section 67 of the Indian Income-tax Act prohibits the institution of any suit for cancelling or modifying an assessment of the income-tax authorities. It is true the prayer in the plaint is not couched in terms which will attract the operation of section 67 of the Income-tax Act, because the prayer is for a declaration that the properties in question are not liable to be proceeded against for the satisfaction of the demand due under the assessment. Merely by casting the prayer in the form of a declaration, the substance of the prayer could not be hidden. The substance here is that the share of the minors in the joint family property is not liable which were not joint family businesses. If the appellants were well advised they could have moved the income-tax authorities under section 23 and section 25A which make provision for a claim made on behalf of a member of a Hindu family on the ground that the assessment should not proceed as though the family was undivided. If such a claim had been made to the income-tax authorities, it was their duty to investigate the claim and record an order embodying their conclusion. Failing that, the appellants could have at least asked for a prayer in the partition suit, O. S. No. 92 of 1948, on this question impleading the tax authorities as parties to the suit. Not having done this, the mere fact a partition is effected in pursuance of the preliminary decree in the suit would not affect the question of the liability of the properties now in suit for the tax arrears. We agree with the learned judge in the court below that section 67 of the Income-Tax Act is a bar to the maintainability of the suit, even though the declaration asked for did not in terms refer to cancellation of the assessment made by the authorities.

The appeal, therefore, fails and is dismissed. There will be no order as to costs.

Appeal dismissed.

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