



W.P.No.5336 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.09.2023

PRONOUNCED ON : 15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.5336 of 2023

and

WMP.Nos.5361, 5362 & 10301 of 2023

K.N.Subramaniam

... Petitioner

vs.

1. The Principal Commissioner of Income Tax,
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai 600 034.

2. The Tax Recovery Officer – III,
Office of the Principal Commissioner of Income Tax,
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai 600 034.

3. The District Registrar,
Corporation Marriage Hall,
Syrian Church Road,
Puthiyavan Nagar, Sukrawar Pettai,
R.S.Puram, Coimbatore

4. Sameer Bhuvaneshwari

.. Respondents



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Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records relating to order dated 16.02.2023 of the 2nd respondent in DIN & Order No.ITBA/COM/F/17/2022-23/1049808522 (1) and quash the same.

For Petitioner : Mr.A.L.Gandhimathi

Senior Counsel

For Mr.L.Palanimuthu

For R1 & R2 : Mrs.S.Premalatha, Junior St.Counsel

Mr.R.S.Balaji

Senior Standing Counsel

For R3 : Mr.J.C.Durairaj

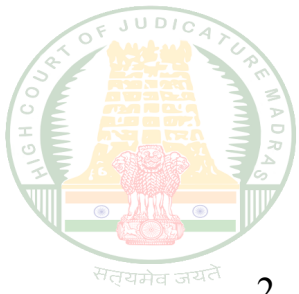
Addl.Govt.Pleader

For R4 : Mrs.Sameer Bhuvaneshwari

Party in person

ORDER

The writ petitioner has challenged the impugned order dated 16.02.2023 passed by the second respondent/the Tax Recovery Officer-III under Rule 11(1) of Second Schedule of the Income Tax Act, 1961.



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2. The impugned order was passed pursuant to the directions of this Court in WP.No.20953 of 2019 and WMP.No.20137 of 2019 dated 14.10.2022 filed by the petitioner. Para No.8,9,10 of the said order reads as follows : -

8. Hence, it is for the TRO to look into the claim of ownership of the property and, in fact, the impugned communication, a mere notice, is precisely to such effect. Learned counsel for the petitioner would express apprehension that the TRO has pre-determined the issue, since at paragraph 2 he proceeds on the basis that the transfer had taken place for inadequate consideration, and when there was tax arrears.

9. The apprehension expressed by petitioner may be allayed by directing R2 to approach the matter with an open mind, hear the petitioner and R3* by issuance of prior notice, take their submissions into account and passing an order thereafter, in accordance with law and bearing in mind all relevant rules in this regard.

10. This Writ Petition is dismissed though with the directions as above. No costs. Connected Miscellaneous Petition is also dismissed.

[*the fourth respondent in this writ petition]

3 Relevant portion of the impugned order dated 16.02.2023 reads as under:-

“It is interesting to note that the facts of the case of the objector and the case law relied upon, are exactly similar. The aspects with regard to the principle of preponderance of probabilities, the explanation and



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counter arguments of the objector exhibiting lack of satisfaction and reasonableness, the failure on part of the income-tax returns of the objector to explain the source of investment made and the financial capacity of the objector are symmetric and therefore based on the circumstantial evidence and corroborative evidence (cancellation of sale agreement and immediate execution of sale deed), and essential supporting evidences in the form of disarranged entries in thumb impression register of SRO for the relevant dates, the actual date of execution of the document identified as forged getting executed on 24.02.2012 much ahead of the dated of cancellation of sale agreement systematically illustrate the non-adherence to this principle, and the financial incapacity of the objector as reflected in the ROI filed for A.Y.2012-13, it is hereby ascertained that the execution of deed of sale dated 24.02.2012 in the records of SRO, Annur, Coimbatore District is not genuine and necessarily termed as a "FORGED DOCUMENT".

On the final aspect that the criminal complaint filed by the Assessee in default, Smt.Sameer Bhuvaneshwari making a case of land-grabbing was quashed by the Hon'ble Supreme Court and that there is no case of claim of ownership by the assessee in default, it is found that this allegation is not true. As per the pronouncement of the Hon'ble Supreme Court SLP(Criminal) No.9087/2015, the complaint being Civil in nature was directed to be proceeded in that manner and hence criminal proceedings was according to the court uncalled for and hence quashed.

The Honourable Court has not provided any



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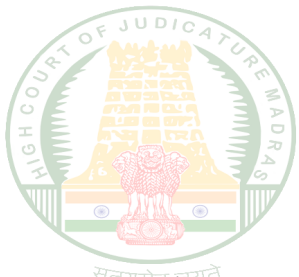
legitimacy to the impugned transaction as being attempted to be made by the objector. Therefore, when this investigation has clearly established that the claim of acquisition by the objector is not genuine, the decision of the Hon'ble Supreme Court which is on a different context and prayer does not absolve the objector from such acts of malfeasance as demonstrated above.

Conclusion: *When the vendor has not received the sale consideration as claimed by the objector, the execution of registration of sale deed by the then SRO, Annur is illegitimate and unlawful and therefore the registration authorities are directed to cancel the same and restore title and ownership over the said asset to the Assessee in default and in-turn confirm the attachment of the impugned asset by the income-tax department for the purpose of recovery of tax dues from the Assessee in default.*

Schedule of the Asset confirmed for attachment.

All that piece and parcel of land and building situate at Central theatre/Shree Astalakshmi theatre along with Plant and Machinery with 64 Cent land appurtenant to the building thereof at S.F.No.339/6, Annur Village, Avinashi Taluk, Coimbatore. Registered in the Annur Sub- Registrar Office in Document No.3609/2007 and 3608/2007”.

4. There is a long history to the litigation between the petitioner and the fourth respondent and the Income Tax Department. The fourth respondent appears as a party in person . The fourth respondent's Return of Income Tax for



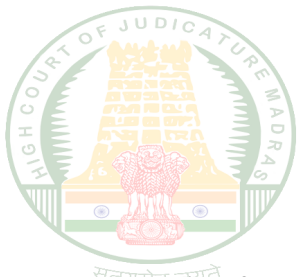
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the Assessment Year 2008-09 and Assessment Year 2009-10 resulted in a demand of tax arrears for a sum of **Rs.20,69,529/-** along with interest under Section 220(2) of **Rs.41,390/-** for the Assessment Year 2008-09 and a sum of **Rs.16,21,470/-** along with interest under Section 220(2) of **Rs.32,428/-** for the Assessment Year 2009-10.

5. As the 4th respondent had defaulted in payment of tax, the respondent Income Tax authorities issued a Demand Notice on 30.05.2011 under Rule 2 of the Second Schedule to the Income Tax Act, 1961. Again on 30.08.2012, another Demand Notice was issued demanding the fourth respondent to pay arrears of tax along with interest. As the fourth respondent failed to pay the arrears of tax, the property of the fourth respondent were attached vide order dated 25.05.2012 in Form ITCP No.16 issued by the Income Tax Department.

6. It appears that petitioner and the fourth respondent had earlier entered into a Sale Agreement dated 19.02.2009 for the sale of one of the property viz., a theater together with land measuring an extent of 4950 Sq.ft. in Survey No.339/6 in Annur Village, Avinasi Revenue Jurisdiction, Coimbatore District.



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The fourth respondent had executed a Power of Attorney dated 18.08.2009 in favour of the wife of the petitioner also named Buvaneshwari. The said Power of Attorney was later cancelled on 16.08.2011 vide Doc.No.971/2011.

7. The Income Tax Department had attached the said property on 25.05.2012. Meanwhile, the sale deed dated 24.02.2012 was registered/executed by the fourth respondent in favour of the petitioner which was registered as Document No.1981/2012.

8. The fourth respondent has stoutly denied the execution of the aforesaid sale deed dated 24.02.2012 in favour of the petitioner. When the case was taken up for hearing, the fourth respondent appeared in person and submitted that the Sale Agreement dated 19.02.2009 which preceded the said bogus sale on 24.02.2012 was cancelled on 27.02.2012 vide Deed of cancellation and registered as Document No.1980/2012 and therefore registration of Sale Deed in favour of the petitioner on 24.02.2012 which is registered as Document No.1981/2012 was void.



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9. The specific case of the fourth respondent is that the fourth respondent had never executed the aforesaid sale deed dated 24.02.2012 which has been registered in Document No.1981/2012. The fourth respondent filed a copy of certificate dated 19.03.2005 of SIFS India, Forensic Science Organization to substantiate that the aforesaid Sale Deed dated 24.07.2014 registered as Document No.1981 of 2012 was a forged document.

10. The learned Senior Counsel appearing for the petitioner would submit that private complaint was given by the fourth respondent against the petitioner and summons were also issued and therefore the petitioner had filed CrI. O.P.No.14617 of 2015 before this Court. It is submitted that CrI. O.P.No.14617 of 2015 was dismissed by this Court vide order dated 17.06.2015. Meanwhile, a final report was also filed by the Investigating Officer on 07.08.2017 whereby it was confirmed that the sale was irregular. It is submitted that the order of this Court passed in CrI.O.P.No.14617 of 2014 was however, set aside by the Hon'ble Supreme Court of India in SLP(CrI.) No.9087 of 2015, dated 25.10.2017.



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11. The learned Senior Counsel for the petitioner has drawn attention to the following passage from the decision of the Hon'ble Supreme Court of India:-

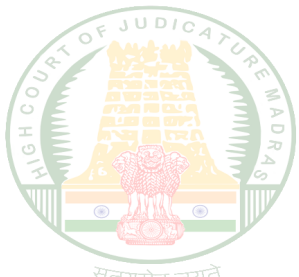
Heard.

We are of the view that the allegations levelled in the criminal proceedings lodged by respondent no.2, are of civil nature and the criminal proceedings are not called for. The same are hereby quashed.

It will be open to respondent no.2 to continue or take any civil proceedings in accordance with law.

The special leave petition is accordingly disposed of. Pending applications, if any, shall also stand disposed of.

12. The learned Senior Counsel appearing for the petitioner further submits that the fourth respondent had an option to file a Civil suit. However, till date, the fourth respondent has not filed a suit against the petitioner. Thus, it is submitted that sale in favour of the petitioner vide registered Document No.1981 dated 24.02.2021 is binding. The learned Senior Counsel appearing for the petitioner further submits that though the second respondent has no jurisdiction to declare that the sale deed dated 24.02.2012 registered as



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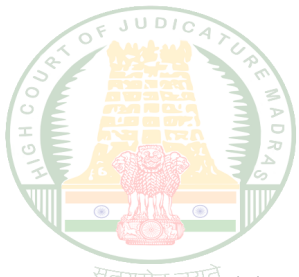
Document No.1981 was void under the provision of the Income Tax Act, 1961.

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13. In this connection, the learned Senior Counsel has drawn attention to decision of Bench of this Court in **Sri Sivalaya Advances and Ors. Vs. Tax Recovery Officer-2, Income Tax Offices, Madurai reported in [2018] 408 ITR 611(Mad)**. A specific reference was made to Para 21 from the said decision, wherein it was observed as under:-

"Yet the orders impugned in these writ petitions cannot sustained as such. The Hon'ble Supreme Court in MANU/SC/0600/1998: (1998) 6 SCC 658 has held that it is the function of the civil court to declare a transaction to be null and void and that the Tax Recovery Officer cannot exercise the said function. Therefore, the respondent clearly erred in declaring the transactions to which the petitioners are parties as null and void. Therefore, the orders impugned in these writ petitions stand quashed to that extent. It would certainly be open to the petitioners herein to avail the remedy set out in Rule 11(6) of the second schedule of the Income Tax Act. If the respondent authority wants to have the transactions nullified, it is the respondent who must go to the Civil Court to seek declaration to that effect. If the writ petitioners want the attachment to be lifted, it is for them to move the civil Court and obtain relief as provided in Rule 11(6) of the second schedule of the Income Tax Act."

14. Learned Senior Counsel would submit that the decision of the



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Hon'ble Supreme Court in *Tax Recovery officer II, Sadar, Nagpur Vs.*

Gangadhar Vishwanath Ranade (1998) 6 Supreme Court Cases 658 was

referred to while passing the above order. It is submitted that the Income Tax

Department has also not filed any appeal against the decision in **Sri Sivalaya**

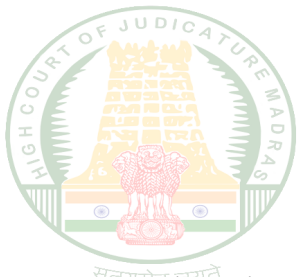
Advances and Ors. Vs. Tax Recovery Officer-2, Income Tax Offices,

Madurai case. Therefore, the ratio therein has to be followed in the facts of the

present case.

15. Learned Senior Counsel has also drawn attention to the decision of this Court rendered in WP.No.20953 of 2019 filed by the petitioner against summons issued under section 281 of the Income Tax Act on 08.05.2019. Though, the writ petition was dismissed by this Court on 14.10.2022, nevertheless, this Court had directed the Officer namely the second respondent to dispose the case by taking into account of all submissions before passing further orders.

16. Learned counsel appearing for the Income Tax Department submits



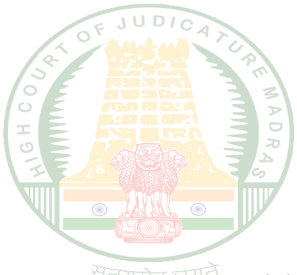
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that the sale was void by operation of law in terms of Rule 16(1) of the II Schedule of the Income Tax Act, 1961. It is therefore submitted that the sale which is said to have taken place on 24.02.2012, *vide* Document No.1981 pursuant to the sale agreement dated 19.02.2009 was void *abinitio*. It is further submitted that even if the second respondent was not required to declare the sale as void, by operation of Rule 16 of II Schedule of Income Tax Act, 1961, said sale was indeed void.

17. That apart, the learned counsel would further submit that the Sale Agreement on 19.02.2009 was canceled by the fourth respondent herein on 27.02.2012 *vide* registered Document No.1980/2012. Therefore, there is no merit in the present Writ Petition. That apart, it is submitted that in terms of Rule 11(6) of the second schedule of the Income Tax Act, 1961, only remedy that is available to the petitioner is to file a civil suit.

18. It is submitted that the fourth respondent is Party-in-Person with whom the petitioner had transactions had registered a sale agreement dated 19.02.2009. It is submitted that the fourth respondent's signature was forged by



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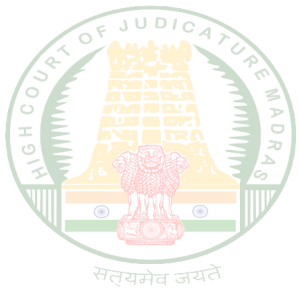
the petitioner in connivance with the Sub Registrar while registering Sale Deed dated 24.02.2012 registered as Document No.1981 of 2012.

19. It is submitted that the sale agreement dated 19.02.2009 was cancelled vide registered Document No.1980 of 2012 on 27.02.2012 and therefore the sale deed dated 24.02.2012 registered as Document No.1981 of 2012 was void. It is submitted that if the document dated 24.02.2012 had preceeded the cancellation of Sale Agreement on 27.02.2012, it should have been numbered prior to 1980 and not after 1980, but it has been registered 1981.

20. Learned counsel for the second respondent has drawn attention to Para 17 of the counter which reads as under:-

17. It is submitted that for proving that the alleged sale deed No.1981/2012 was not executed by the 4th Respondent, I extracted the reason for cancellation of the sale agreement; wherein which was stated in the 2nd paragraph of the cancellation of sale deed No.1980/2012 by the petitioner and the 4th Respondent for easy reference as follows:-

மேற்படி ஒப்பந்தம் செய்து கொண்ட பிறகு நம்மில் 2வது



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நபருக்கு ஒப்பந்தப்படி தற்பொழுது கிரயம் செய்து கொள்ள விருப்பம் இல்லாத காரணத்தினாலும் அதே போல் 1வது நபருக்கும் கிரயம் செய்து கொடுக்க விருப்பம் இல்லாத காரணத்தினாலும் 19.02.2009ந் தேதியன்று செய்து கொண்ட கிரய ஒப்பந்த பத்திர ஆவண எண்.826/2009 இன்று நாம் இதன் மூலம் ரத்து செய்து கொண்டுள்ளோம்.

இந்த ரத்துக்காக நாம் ஒருவருக்கொருவர் எவ்வித பிரட்டிபிரயோஜனமும் பெற்று கொள்ளவில்லை.

அதேபோல் சொத்தின் சுவாதீனமும் நமக்குள் கைமாறவில்லை, இந்தபடி நாம் மனப்பூர்வமாய் எழுதி வைத்துக்கொண்ட கிரய ஒப்பந்த ரத்து பத்திரம்.

21. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the Income Tax Department and the 4th respondent who appeared as party in person.

22. The question that arises for consideration is whether the impugned order is liable to be quashed or whether the petitioner or the fourth respondent should be relegated to approach the Civil court in terms of the Section 11(6) of the Second Schedule to the Income Tax Act, 1961 or whether the fourth respondent who has failed to file the Civil suit in terms of decision of the Hon'ble Supreme Court in SLP.(CrI.)No.9087 of 2015, dated 25.10.2017 is entitled to have audience before this Court.



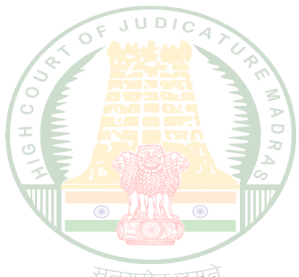
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23. The challenge to the impugned order is unsustainable on the grounds stated in the affidavit as admittedly the assets of the 4th respondent were attached by the Income Tax Department on 25.05.2012 in respect of arrears of tax of the 4th respondent for Assessment year 2008-2009 and Assessment year 2009-2010. The alienation/transfer is contrary to section 281 of the Income Tax Act,1961.

24. The sale of the subject property vide Document No1981 dated 24.2.2012 was followed by a order of attachment dated 25.05.2012. The decision of the Hon'ble Supreme Court in ***Tax Recovery Officer II versus Gangadhar Vishwanath Ranade (1998) 6 SCC 658*** cannot be applied to the facts of the present case as it was rendered in the context of Section 281 of the Income Tax Act, 1961 when it read differently.

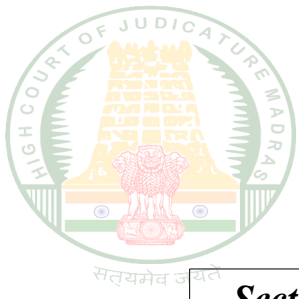
25. Section 281 of the Income Tax Act, 1961 as it stood during the period when the above decision was rendered and as it reads today is materially



different. Section 281 of the Income Tax Act, 1961 reproduced below:-

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| <i>Section 281 of Income Tax Act, 1961 (before amendment)</i> | <i>Section 281 of Income Tax Act, 1961 (after amendment)</i> |
|---|--|
| <p>281. Where, during the pendency of any proceeding under this Act, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, with the intention to defraud the Revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding :</p> <p>Provided that such charge or transfer shall not be void if made for valuable consideration and without notice of the pendency of the proceeding under this Act”.</p> | <p>281. (1) Where, during the pendency of any proceeding under this Act or after the completion thereof, but before the service of notice under rule 2 of the Second Schedule, any assessee creates a charge on, or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, any of his assets in favour of any other person, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise :</p> <p>Provided that such charge or transfer shall not be void if it is made—</p> <p>(i) for adequate consideration and without notice of the pendency of such proceeding or, as the case may be, without notice of such tax or other sum payable by the assessee ; or</p> <p>(ii) with the previous permission of the Assessing Officer.</p> <p>(2) This section applies to cases where the amount of tax or other sum payable or likely to be payable</p> |

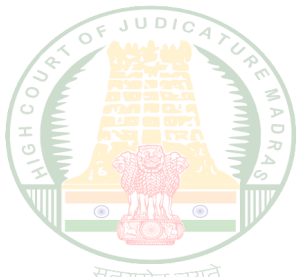


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| Section 281 of Income Tax Act, 1961 (before amendment) | Section 281 of Income Tax Act, 1961 (after amendment) |
|--|--|
| | exceeds five thousand rupees and the assets charged or transferred exceed ten thousand rupees in value. Explanation.—In this section, "assets" means land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee. |

26. There were few amendments to the main body of Section 281 of the Income Tax Act, 1961 and substitution of the proviso. Sub- Section 2 to Section 281 of the Income Tax Act, 1961 was also introduced setting the contours of its operation in view of amendment to Section 281 of the Income Tax Act, 1961 with effect from 01.10.1975 vide Taxation Laws (Amendment) Act, 1975. It made it clear that the section applies to cases where the amount of tax or another sum payable or likely to be payable exceed Rs.5000 and the assets argued or transferred exceeds Rs. 10,000 in value.

27. Thus, the law laid down by the Hon'ble Supreme Court in ***Tax Recovery officer II, Sadar, Nagpur Vs. Gangadhar Vishwanath Ranade***

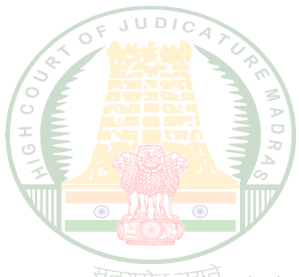


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(1998) 6 Supreme Court Cases 658 has been diluted in view of amendment to Section 281 of the Income Tax Act, 1961 with effect from 01.10.1975 vide Taxation Laws (Amendment) Act, 1975. Importantly the expression “**with the intention to defraud the Revenue**” in Section 281 of the Income Tax Act, 1961 has been deleted.

28. The scope of enquiry under Rule 11 of the 2nd Schedule to the Income Tax Act, 1961 when the above decision was rendered was in the context of sale by an assessee in default with an intention to defraud revenue. In that context, such a sale could be declared as void. There, the attachment was made on 21.10.1972. The assessee in the above case had stated he had mortgaged the property in favour of the Bank of Maharashtra for raising a loan of Rs.75,000/-. He further stated that on 21.02.1967 he had executed a trust deed in respect of the said property in favour of his wife and his daughter. On 27.02.1969, the first respondent had registered deed and conveyed the said property to his wife and his daughter, original respondent. Objections were also filed by the Bank of Maharashtra. The assessee as well as his wife and his daughter, therefore, contended that on the date when notice was issued under Rule 2 of the second



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Schedule to the Income Tax Act and also on the date when the said property was attached by the Tax Recovery Officer, the ownership of the property was his wife and his daughter. Hence, it was contended the property could not be attached for the dues of the assessee.

29. It was in the said context in para Nos. 8,9 and 12, the Court held as under:-

8. Section 281 declares as void any transfer made by the assessee during the pendency of proceedings under the Act, with the intention to defraud the Revenue. The powers of the Tax Recovery Officer, however, under Rule 11 of the Second Schedule to the Income Tax Act are somewhat different. Under Rule 11(1), where any claim is preferred to or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection. Under Rules 11(4), (5) and (6), it is provided as follows:-

“11. (4) Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, *such property was not*, at the said date, *in possession of the defaulter* or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him,*or*



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that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

- (5) Where the Tax Recovery Officer is *satisfied that the property was, at the said date, in the possession of the defaulter as his own property* and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.
- (6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.”

9. The Tax Recovery Officer, therefore, has to examine who is in possession of the property and in what capacity. He can only attach property in possession of the assessee in his own right, or in possession of a tenant or a third party on behalf of/for the benefit of the assessee. He cannot declare any transfer made by the assessee in favour of a third party as void. If the Department finds that a property of the assessee is transferred by him to a third party with the



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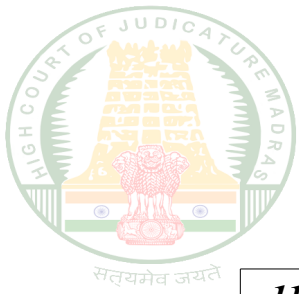
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intention to defraud the Revenue, it will have to file a suit under Rule 11(6) to have the transfer declared void under Section 281

12. In the light of this discussion about the provisions of Order 21 Rules 58 to 63, if we examine Rule 11(4) of the Second Schedule to the Income Tax Act, it is clear that the Tax Recovery Officer is required to examine whether the possession of the third party is of a claimant in his own right or in trust for the assessee or on account of the assessee. If he comes to a conclusion that the transferee is in possession in his or her own right, he will have to raise the attachment. If the Department desires to have the transaction of transfer declared void under Section 281, the Department being in the position of a creditor, will have to file a suit for a declaration that the transaction of transfer is void under Section 281 of the Income Tax Act.

30. Rule 11 (4) to (6) of the 2nd Schedule to the Income Tax Act, 1961

reads as under:-



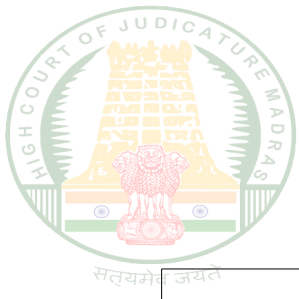
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| | |
|-------|---|
| 11(4) | <i>Where, upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.</i> |
| 11(5) | Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim. |
| 11(6) | Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a civil court to establish the right which he claims to the property in dispute; but, subject to the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.” |

31. Rule 11(4) is reproduced below for better understanding :-

| | | | |
|--|----------------------|----------------------|--|
| The Tax Recovery Officer is satisfied that such property | | | |
| was not in possession | or that being in the | or partly on his own | |

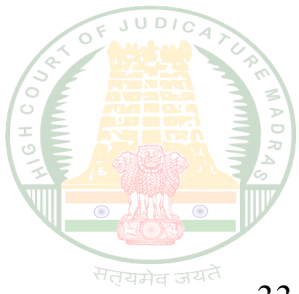


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| The Tax Recovery Officer is satisfied that such property | | |
|--|---|---|
| | possession of the defaulter at the said date | account and partly on account of some other person, |
| of the defaulter; or of some person in trust for him; or in the occupancy of a tenant; or other person paying rent to him, | it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, | |
| The Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale. | | |

32. The Hon'ble Supreme Court there had interpreted Rule 11 of the 2nd Schedule to the Income Tax Act, 1961 and observed that under Rule 11 (1), where any claim is preferred or any objection is made on the ground that such property is not liable to such attachment of sale, the Tax Recovery Officer shall proceed to investigate the claim or objection.

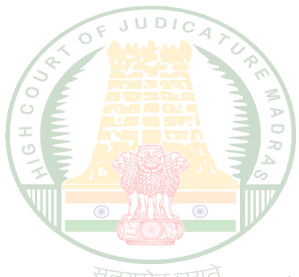


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33. After reproducing Sub Rule (4), (5) and (6) Rule 11 of the 2nd Schedule to the Income Tax Act, 1961, the Hon'ble Supreme Court held that the Tax Recovery Officer has to examine who is in possession of the property and in what capacity. Court further held that Tax Recovery Officer can attach property in possession of the assessee in his own right, or in possession of the tenant or 3rd party on behalf of/for the benefit of the assessee.

34. The Court however concluded that Tax Recovery Officer cannot declare sale made by the assessee in favour of a 3rd party as void, if he finds that the property of the assessee was transferred by the assessee to a 3rd party with “ an **intention to defraud the revenue**. As mentioned above, the expression “intention” has been deleted in the amended Section. The Court further held that, the Income Tax Department will have to file a suit in terms of Rule 11 (6) of the 2nd Schedule of the Income Tax Act, 1961, though under Rule 11 (6) of the 2nd Schedule of the Income Tax Act, 1961, the party against whom an order of attachment is made, has to institute a suit in a civil court to establish the right which he claims over the property in dispute and subject to



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the result of such suit (if any), the order of the Tax Recovery Officer shall be conclusive.

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35. Therefore, the ratio laid down by the Hon'ble Supreme Court in *Tax Recovery officer II, Sadar, Nagpur Vs. Gangadhar Vishwanath Ranade (1998) 6 Supreme Court Cases 658* cannot be applied to the facts of the present case. Further, Tax Recovery officer is not required to declare the sale between the petitioner and the fourth respondent as invalid as the sale is *void abinito*. The petitioner has to institute a suit in a civil court to establish the right which he claims over the property in dispute.

36. Therefore, this writ petition is liable to be dismissed and it is accordingly dismissed. Challenge to the impugned order is unsustainable. Liberty is given to the petitioner to file suit strictly in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

15.02.2024

Index : Yes/No
Neutral Citation : Yes/No
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C.SARAVANAN, J.

kkd

To

1. The Principal Commissioner of Income Tax,
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai 600 034.
2. The Tax Recovery Officer – III,
Office of the Principal Commissioner of Income Tax,
Income Tax Department,
No.121, M.G.Road, Nungambakkam,
Chennai 600 034.
3. The District Registrar,
Corporation Marriage Hall,
Syrian Church Road,
Puthiyavan Nagar, Sukrawar Pettai,
R.S.Puram, Coimbatore

Pre-delivery Order in
W.P.No.5336 of 2023

15.02.2024