IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2018

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.344 of 2013
and
M.P.No.1 of 2013

1.Tax Recovery Officer-I Central
(Now Tax Recovery Officer XII,
Business Range II, Chennai),
108 Mahatma Gandhi Road
Nungambakkam,
Chennai 600 034.

2.Deputy Commissioner of Income Tax,
Central Circle-5,
(Now Assistant Commissioner of Income Tax
Circle II Business Range II)
108 Mahatma Gandhi Road,
Chennai. ..Appellants/Respondents

..Vs..

Ms.P.Shanthi ..Respondent/Petitioner

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order of the Learned Judge in WP.No.14991 of 2002 dated 15.11.2011.

WP.No.14991 of 2002: Petition under Article 226 of the Constitution of India praying for the issuance of writ of Mandamus directing the first respondent to raise the attachment of the petitioner's property at flat No.31, Venkataraman, street, T.Nagar, Chennai-17 in T.R.No.117/C.R.I/2001-2002 dt.18.9.2001.

For Appellants : Mr.A.P.Srinivas

For Respondent : Mr.Ashokpathy for
M/s.Pass Associates

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J U D G M E N T

(Judgment of this Court made by K.K.SASIDHARAN, J)

The immovable property owned by the respondent was attached by the recovery officer, on the ground that the property was purchased by deceased Shri.S.M.Pandian, her husband in her name by utilizing his money.

2.The order dated 18.09.2001, on the file of the Tax Recovery Officer, Chennai was challenged by the respondent before the Writ Court in W.P.No.14991 of 2002. The learned Single Judge taking into account the submission made by the respondent that the property was purchased by her, passed an equitable order directing the Tax recovery Officer to consider the entire matter on receipt of the original title deed. The first appellant was directed to peruse the original title deed and pass appropriate orders. Aggrieved by the said order, the appellant has come up with the intra Court appeal.

3.The learned standing counsel for the Income Tax Department contented that in the block return of income filed by the respondent it was shown that the property belong to S.M.Pandian. In view of the return filed by the respondent, the Tax Recovery Officer is right in attaching the property in question.

4.The learned counsel for the respondent contented that the marriage of the respondent with Thiru.S.M.Pandian was dissolved long back and the property was purchased thereafter. The property being the private property of the respondent is not liable for attachment.

5.In order to recover the amount due from S.M.Pandian, the property owned by the respondent was attached by the recovery officer primarily on the ground that it was purchased by none other than S.M.Pandian, her former husband, in her name. The recovery Officer in order to attach the property relied on the black return of income filed by the respondent, wherein it was stated that the subject property belongs to S.M.Pandian.

6. The respondent by producing the title deed and other documents contented that the property belongs to her and the recovery officer was not correct in attaching the property.

7.The learned Single Judge on a careful consideration of the entire factual matrix directed the Tax Recovery Officer to enquire into the matter and pass a considered order. The respondent was directed to produce the original of the title

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deeds before the appellant.

8. The documents available on record indicate that the decree of divorce was granted on 25.08.1993. The property was purchased by the respondent on 06.09.1995. The learned single Judge has given authority to the Tax Recovery Officer to decide the issue on merits. The order was passed to safeguard the interest of both the parties. We are therefore of the view that the order is unassailable.

9. In the upshot, we dismiss the intra Court Appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

stm/arr
To
1.Tax Recovery Officer-I Central
(Now Tax Recovery Officer XII,
Business Range II, Chennai),
108 Mahatma Gandhi Road
Nungambakkam,
Chennai 600 034.

2.Deputy Commissioner of Income Tax,
Central Circle-5,
(Now Assistant Commissioner of Income Tax
Circle II Business Range II)
108 Mahatma Gandhi Road,
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate Sr.No.6395

PA(CO)
sm:8.3.2018

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