IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :08.02.2019
PRONOUNCED ON:15.02.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No. 1103 of 2005

1.Ponnappan

2.P.Sakthivel

3.P.Senthil Kumar ... Appellants/Plaintiffs

Vs.

1.State Rep. By
District Collector,
Erode District.

2.Assistant Commissioner of
Commercial Taxes,
Erode District.

3.Commercial Tax Officer,
Nethaji Road Circle,
Erode. ... Respondents

Prayer:Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 05.01.2005 made in A.S.No.53 of 2004 on the file of the Principal Subordinate Court, Erode confirming the judgment and decree dated 10.04.2004 made in O.S.No.208 of 2002 on the file of the I Additional District Munsif Court, Erode.

For Appellants : Mr.I.C.Vasudevan

For Respondents : Mr.Sricharan Rangarajan
Special Government Pleader (CS)

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 05.01.2005 passed in A.S.No.53 of 2004 on the file of the Principal Subordinate Court, Erode confirming the judgment and decree dated 10.04.2004 passed in O.S.No.208 of

2002 on the file of the I Additional District Munsif Court, Erode.

2. The Second Appeal has been admitted on the following substantial questions of law:

> Whether the Courts below is correct in holding that no notice is necessary to the legal heirs of the deceased dealer i.e., their father before making any penal interest for delayed payment of arrears of tax and whether the principles set out in 1981 (Vol.47) Sales Tax Cases p.273 (India Tyre & Rubber Co. (India) P.Ltd., Vs. Commercial Tax Officer, Madras) will apply to the case on hand?

3. The parties are referred to as per the rankings in the trial court.

4. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow campus , it is unnecessary to dwell into the facts of the case in detail.

5. The plaintiffs are the legal representatives of V.P.Palaniyappa Chettiyar. It is found that qua the arrears of tax liable to be paid by V.P.Palaniyappa Chettiyar, the assessment order had come to be passed against him under the Tamil Nadu General Sales Tax Act 1959 and challenging the same, it is found that V.P.Palaniyappa Chettiyar had preferred the appeals, however the appeals were dismissed. The same could be gathered from the documents marked as Exs.B1 and B2. Subsequent thereto, it is found that V.P.Palaniyappa Chettiyar had died leaving the plaintiffs as his legal representatives. The abovesaid facts are not in dispute.

6. It is also noted, on the basis of the available materials on record that following the death of V.P.Palaniyappa Chettiyar, pursuant to the demand made to the deceased V.P.Palaniyappa Chettiyar, it is found that the plaintiffs had paid the remaining portion of the tax arrears left unpaid by the deceased V.P.Palaniyappa Chettiyar. Thereafter, inasmuch as the plaintiffs are found to be liable to pay the penal interest on the tax arrears, it is found that the letter had been issued by the Commercial Tax Officer calling upon the plaintiffs to pay the penal interest and challenging the same and seeking a declaration that the abovesaid notice dated 22.02.2002 is null and void and non-est in the eyes of law and for other allied reliefs, the plaintiffs have come forwarded with the Civil suit.

7. Inter alia, the defendants had challenged the abovesaid civil action laid by the plaintiffs on the footing

that Section 51 of the Tamilnadu General Sales Tax Act 1959, prohibits the Civil Courts jurisdiction in entertaining the suit laid by the plaintiffs and accordingly sought for the dismissal of the plaintiffs' suit.

8. Based on the materials placed on record by the respective parties, both oral and documentary, the Courts below were pleased to dismiss the plaintiffs' suit, inter alia on the ground that the Civil Court has no jurisdiction to entertain the lis and also on the footing that there is no need for issuing any fresh notice of demand to the plaintiffs to pay the penal interest on the delayed payment of tax arrears. Impugning the same, the present Second Appeal has been preferred.

9. As abovenoted, the plaintiffs are the legal representatives of the deceased V.P.Palaniyappa Chettiyar. The assessment order has been made against the deceased V.P.Palaniyappa Chettiyar qua the tax arrears under the Tamil Nadu General Sales Tax Act 1959 and it is found that, after the appeal preferred by him having ended in vain the deceased V.P.Palaniyappa Chettiyar had made the part payment of tax arrears and it is further noted that the plaintiffs, as his legal heirs, had also paid the remaining portion of the tax arrears. Subsequently, the impugned notice has come to be issued to the plaintiffs calling upon them to pay the penal interest for the delayed payment of the tax arrears. Impugning the same, the suit has been laid by the plaintiffs.

10. The main contention putforth by the plaintiffs is that before calling upon them to pay the penal interest on the tax arrears, they have not been issued any notice on demand under the Tamil Nadu General Sales Tax Act 1959 and on that footing alone, the impugned notice is invalid and liable to be struck down. On the other hand, the defendants contended that as per Section 15 of the Tamil Nadu General Sales Tax Act 1959, the plaintiffs, as the legal representatives of the deceased V.P.Palaniyappa Chettiyar are liable to pay the tax arrears and the penal interest upon the same and therefore according to the defendants inasmuch as the impugned notice has been issued consequent to the demand of tax arrears already issued to the deceased V.P.Palaniyappa Chettiyar and accepting the same, both the deceased as well as the plaintiffs had also paid the tax arrears, according to the defendants, there is no need to issue a fresh notice of demand to the plaintiffs to pay the penal interest liable to be paid by them on the delayed payment of the tax arrears and therefore contended that the abovesaid contention put forth by the plaintiffs does not stand scrutiny in the eyes of law.

11.As rightly determined by the Courts below, considering the import of section 15 of the Tamil Nadu General Sales Tax Act 1959, it is found that the plaintiffs are liable to pay the arrears left unpaid by the deceased father. Section 15 of the Tamil Nadu General Sales Tax Act 1959 reads as follows:

Assessment of legal representatives:

> 15. Where a dealer dies, his executor, administrator or other legal representative shall be deemed to be the dealer for the purpose of this Act and the provisions of this Act shall apply to him in respect of the business of the said deceased dealer, provided that in respect of any tax or fee assessed as payable by any such dealer or any tax or fee which would have been payable by him under this Act if he had not died, the executor, administrator or other legal representative shall be liable only to the extent of the assets of the deceased in his hands.

12.When the original assessment had been made on the deceased V.P.Palaniyappa Chettiyar and the same had been confirmed by the Tribunal and following the same, tax arrears had been paid both by the deceased V.P.Palaniyappa Chettiyar and the plaintiffs, it is found that the impugned notice calling upon the plaintiffs to pay the penal interest on the delayed payment of the tax arrears with reference to the same, as determined by the Courts below, no fresh notice of demand is necessary and when considering the facts and circumstances of the case, when it is not in dispute that the plaintiffs had admittedly paid the tax arrears following the assessment order made on the deceased V.P.Palaniyappa Chettiyar which could be evidenced from Ex.B4 and when the plaintiffs had not denied the alleged payments made by them by way of Ex.B4 and when with reference to the said payments, a fresh notice of demand had not been issued to the plaintiffs and on the other hand, they had chosen to pay the tax arrears following the original notice on demand made to the deceased V.P.Palaniyappa Chettiyar and when it is seen that the impugned notice is issued only directing the plaintiffs to pay the penal interest on the delayed payment of the tax arrears and when the plaintiffs have knowledge about the liability to pay tax arrears and also paid the tax arrears, as rightly determined, the levy of penal interest is only by way of an incidental proceeding and in such view of the matter, the plaintiffs cannot expect or demand a fresh notice to be made upon them for claimining the payment of the penal interest particularly when it is noted that they have without any demur paid the unpaid portion of the tax arrears.

13. In the light of the above discussions, the Courts below are correct in holding that there is no need for issuing any fresh notice of demand to the plaintiffs, the legal heirs of the deceased V.P.Palaniyappa Chettiyar, for paying the penal interest on the delayed payment of the tax arrears.

14. The Courts below have also held that the suit laid by the plaintiffs is barred by Section 51 of the Tamil Nadu General Sales Tax Act 1959, which reads as follows:

> 51.(a) No suit or other proceedings shall, except as expressly provided under this Act be instituted in and court to set aside or modify any assessment made under this Act.
>
> (b) No injunction shall be granted by any court in respect of any assessment made, or to be made, or in respect of any action taken, or to be taken ,in pursuance of any of the provisions of this Act.

15. Considering the abovesaid provisions of law, as rightly determined by the Courts below, when the Civil Court's jurisdiction has been specifically barred under the Act, by virtue of Section 51 and when the remedy is open and available to the plaintiffs to challenge the impugned notice before the appropriate Authorities/Tribunal as per the procedure prescribed in the Act and when as per Section 15 of the Tamil Nadu General Sales Tax Act 1959, the plaintiffs are deem to be the dealers under the Act having the liability to pay the tax arrears of the deceased V.P.Palalniyappa Chettiar, it is found that as determined by the Courts below, the plaintiffs' suit challenging the impugned notice is found to be not maintainable and when as abovediscussed there is no need for issuing a fresh notice of payment to the plaintiffs calling upon them to pay the penal interest, in my considered opinion and also as determined by the Courts below, when there is no infraction of the principles of natural justice in the issuance of the impugned notice and considering the scope and ambit of Section 51 of Tamil Nadu General Sales Tax Act 1959, it is found that the Civil action laid by the plaintiffs is not legally sustainable and barred. The decision is relied upon the plaintiffs' counsel reported in 1983 (2) Karnataka Law Journal 56 [Lakshmi Ammal and others Vs. The commercial Tax Officer, XIV Circle Bangalore, in my considered opinion would not apply to the facts and circumstances of the case at hand and the principles of law outlined in the abovesaid decision are taken into consideration.

16. In the light of the above position, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

17.In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Principal Subordinate Judge,
   Principal Subordinate Court,
   Erode.

2. The I Additional District Munsif,
   I Additional District Munsif Court,
   Erode.

Copy to

The Section Officer,
VR Section,
High Court.

+1 CC to M/s.I.C. Vasudevan, Advocate sr 15191
+1 CC to Govt. Pleader sr 14665.

S.A.No. 1103 of 2005

CNR(CO)
SP(26/04/2019)