

Mr. P. S. Naga- liabilities which may have been incurred by the
 runjan, Sole firm after Pook's death. A reasonable allow-
 Proprietor, ance should be made for the fact that the defen-
 M/s. Bliss and dant has been carrying on the work of the busi-
 Cotton, Simla. ness alone and he will therefore be entitled to an
 v. amount representing the labour and time ex-
 Mr. Robert Hotz, Adminis- pended by him. The commissioner appointed
 trator of the by the trial Court will submit his report to
 Estate of Late the trial Court within a period of two months and
 Mr. A. B. Pook, after hearing objections of the parties the trial
 Simla. Court will proceed to pass a final decree.

Khosla, J.
 Falshaw, J.

FALSHAW, J. I agree.

APPELLATE CIVIL.

Before Bhandari, C. J., and Harnam Singh, J.

THE UNION OF INDIA,—Defendant-Appellant

versus

FIRM RALIA RAM-RAJ KUMAR,—Respondents

Letters Patent Appeal No. 14 of 1952

1954

July, 2nd

Punjab Land Revenue Act (XVII of 1887), Section 158 (2) (XIV)—Property of a person other than the defaulter attached by the Collector for recovery of income-tax as arrears of land revenue under section 46 (2) of the Income-Tax Act—Suit by such person for declaration that the property attached is not the property of the defaulter but his—Such suit whether barred by section 158 (2) (XIV)—Indian Income-tax Act (XI of 1922), Section 46 (2) proviso—Applicability of.

Held, that section 158(2)(XIV) of the Punjab Land Revenue Act was intended to oust the jurisdiction of Civil Courts with respect to matters dealt with in Chapters VI and VII of the Act dealing with collection of land revenue or the enforcement of any process for the recovery of land revenue. There is no provision in the Act which may give relief to a person other than the

defaulter in case the property of that person is proceeded against for the recovery of arrears of land revenue. It was therefore not the intention of the legislature that the prohibition contained in the section should apply to claims of persons other than the defaulter, and thus the suit of such a person was not barred.

Held further, that the powers conferred on the Collector by the proviso to section 46(2) of the Income Tax Act are to be used, by the Collector in proceedings which are permitted under Chapters VI and VII for the recovery of arrears of land revenue as the Act does not give the person other than a defaulter a right to object to the attachment and sale for such recovery.

Letters Patent appeal under Clause 10 of the Letters Patent from the decree of the Hon'ble Mr. Justice Soni of the High Court of Judicature for the State of Punjab, Simla, dated the 3rd June, 1952, reversing that of Shri Sher Singh, District Judge, Jullundur, dated the 7th May, 1951, and restoring that of Shri Basant Lal, Sub-Judge, 1st Class, Jullundur, dated the 22nd July, 1950 (passing a decree for declaration and injunction prayed for in favour of the plaintiff against defendant No. (1) with costs) and directing that half of the suit properties representing the share of Daulat Ram are not liable to be attached in realization of income-tax from Arur Chand or from Arur Chand Kishori Lal and that the said half shall be sold and ordering issue of an injunction to this effect and leaving the parties to bear their own costs throughout.

S. M. SIKRI, Advocate-General and HEM RAJ MAHAJAN, for Appellant.

F. C. MITAL, and S. D. BAHRI, for Respondents.

JUDGMENT

HARNAM SINGH, J. In order to appreciate the point of law that arises for decision in Letters Patent Appeal No. 14 of 1952, it is necessary to set out the facts of the case in some detail.

Harnam Singh,
J.

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 Harnam Singh J.

Shri Bansi Lal, Income-tax Officer, forwarded to the Collector Certificate, Exhibit P.Y., under section 46(2) of the Income-tax Act, 1922, specifying that Rs. 1,75,627-10-0 were due from Messrs. Arur Chand-Kishori Lal, assessee, on account of arrears of income-tax, super-tax and penalty. In forwarding the certificate, Exhibit P.Y., *Shri* Bansi Lal sent letter, Exhibit P.X., to the Collector, Jullundur, stating that the amount specified in the certificate should be recovered from the movable and immovable property of Arur Chand. In that letter the Income-tax Officer maintained that, Arur Chand being the sole proprietor of Messrs. Ralia Ram-Raj Kumar, the movable and immovable property of Messrs. Ralia Ram-Raj Kumar was liable to attachment and sale for the recovery of the amounts specified in the certificate.

Pursuant to the requisition made by the Income-tax Officer under section 46(2) of the Income-tax Act, the Collector attached properties mentioned in lists 'A' and 'B' appearing at pages 9 and 11 of the record of the suit out of which these proceedings have arisen.

Messrs. Ralia Ram-Raj Kumar served notice, Exhibit D. 1, on the Government of India under section 80 of the Code of Civil Procedure. In that notice Messrs. Ralia Ram-Raj Kumar maintained that the properties attached were not the properties of the assessee-firm or Arur Chand. Messrs. Ralia Ram-Raj Kumar objected to the attachment, but the Tahsildar, Jullundur, rejected the objection on the 14th of September, 1948.

From the order rejecting the objections Messrs. Ralia Ram-Raj Kumar went up in appeal before the Collector. That appeal was dismissed on the 31st of March, 1949.

On the 6th of November, 1948, Messrs. Ralia The Union of
 Ram-Raj Kumar instituted the suit out of which India
 these proceedings have arisen for declaration that v.
 the properties attached were the properties of the Firm Ralia
 plaintiff-firm and were not liable to attachment Ram-Raj
 and sale for the recovery of income-tax, super-tax, Kumar
 and penalty due from Messrs. Arur Chand-Kishori Harnam Singh,
 Lal. In that suit injunction was claimed restraining J.
 the Government from auctioning the attached
 properties.

On the 18th of February, 1949, the Court of
 first instance fixed the following issue on the
 pleadings of the parties:—

Whether the property in dispute belongs to
 the plaintiff-firm?

Arur Chand having been adjudicated insolvent,
 the Official Receiver, Jullundur, was impleaded to
 be the defendant.

In decreeing the suit with costs the Court of
 first instance found that the attached properties
 belonged to the plaintiff-firm of which Daulat Ram
 and not Arur Chand was the proprietor.

From the decree passed in that suit the Union
 of India appealed under section 96 of the Code of
 Civil Procedure.

In the Court of the District Judge, the Union
 of India objected that the suit was barred by sec-
 tion 158(2)(xiv) of the Punjab Land Revenue Act,
 hereinafter referred to as the Act. That
 objection failed and was disallowed. On
 merits the District Judge found that Daulat Ram
 was owner of one-half of the properties attached
 and that that one-half share was not liable to

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attachment and sale for the recovery of income-tax, super-tax and penalty due from Messrs. Arur Chand-Kishori Lal. In deciding the appeal the Court left the parties to bear their own costs throughout.

Messrs. Ralia Ram-Raj Kumar appealed from the decree passed by the District Judge in Civil Appeal No. 243 of 1950.

In Regular Second Appeal No. 497 of 1951 it was said that the suit out of which the appeal arose was barred by section 158(2)(xiv) of the Act and that Arur Chand was not the owner of one-half of the properties attached.

In overruling the objection as to the competency of the suit Soni, J., said—

“If *ex facie* the property which is being proceeded against belongs to the defaulter then the proceedings of the Collector could not be challenged, but where in the very beginning or inception or *ex facie* it is somebody else's property which is being proceeded against then there is no principle of law which would bar the jurisdiction of the Courts.”

In allowing Regular Second Appeal No. 497 of 1951, Soni, J., set aside the order and decree passed by the District Judge and restored the decree passed by the Court of first instance with costs throughout.

From the judgment given in Regular Second Appeal No. 497 of 1951, the Union of India appeals under clause 10 of the Letters Patent.

In arguments it was conceded that the decision on facts given by the Court of first appeal was not open to challenge.

From what I have said above, it is plain that the point that arises for decision is whether the suit out of which these proceedings have arisen was barred by section 158(2)(xiv) of the Act.

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Section 158(2)(xiv) of the Act reads—

“158. Except as otherwise provided by this Act—

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(1) * * * * *

(2) a Civil Court shall not exercise jurisdiction over any of the following matters, namely—

* * * * *

(xiv) any claim connected with, or arising out of the *collection* by the Government, or the enforcement by the Government of *any process* for the recovery of land-revenue or any sum recoverable as an arrear of land-revenue;

* * * * *

From a perusal of section 158(2)(xiv) of the Act it is plain that section 158(2)(xiv) was intended to oust the jurisdiction of civil Courts with respect to matters dealt with in Chapters VI and VII of the Act dealing with the *collection* of land-revenue or the enforcement of any *process* for the recovery of land-revenue.

In sections 61 to 78 provision is made for the *collection* of land-revenue. Sections 79 to 96 of the Act provide procedure to be followed in sales while sections 97 and 98 prescribe procedure for the recovery of demands other than land-revenue by Revenue Officers.

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Section 67 of the Act defines *processes* for the recovery of arrears of land-revenue. That section reads—

“67. Subject to the other provisions of this Act, an arrear of land-revenue may be recovered by any one or more of the following *processes*, namely—

- (a) by service of a writ of demand on the *defaulter*;
- (b) by arrest and detention of *his* person;
- (c) by distress and sale of *his* movable property and uncut or ungathered crops;
- (d) by transfer of the holding in respect of which the arrear is due;
- (e) by attachment of the estate or holding in respect of which the arrear is due;
- (f) by annulment of the assessment of that estate or holding;
- (g) by sale of that estate or holding;
- (h) by proceedings against other immovable property of the *defaulter*.”

Plainly, no person other than the defaulter is to be affected by any process issued under the Act for the recovery of arrears of land-revenue. In recovering arrears of land-revenue processes for the recovery of those arrears are to issue against the person or property of the defaulter. Indeed, section 77 of the Act provides *inter alia* that no interests save those of the *defaulter* shall be proceeded against, and no incumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only

of his interest being proceeded against. In my judgment, the claims referred to in section 158(2) (xiv) of the Act are claims which are connected with or arise out of proceedings for the enforcement of any process for the recovery of land-revenue or any sum recoverable as an arrear of land-revenue.

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Section 78 of the Act provides for payment under protest made in writing at the time of payment and gives the defaulter a right to institute suit in civil Court for the recovery of money so paid.

Section 84 of the Act provides that on payment by the defaulter the arrears in respect of which the property has been proclaimed for sale the sale shall be stayed.

Section 91 of the Act provides for an application to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting the sale.

Section 92 of the Act provides for the confirmation of sale in certain cases and for the setting aside of the sale in certain other cases.

Section 158(2) (xv) of the Act provides that an action to set aside a sale for the recovery of arrears of land-revenue or any sum recoverable as an arrear of land-revenue on the ground of fraud would be competent in a civil Court.

From an examination of the Act it is plain that no provision has been made therein which may give relief to a person other than the defaulter in case the property of that person is proceeded against for the recovery of arrears of land-revenue. That being the position of matters, the conclusion is almost irresistible that it was not the intention

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of the legislature that the prohibition contained in section 158(2)(xiv) of the Act should apply to the claims of persons other than the defaulter.

In sections 79 to 96 of the Act procedure to be followed in sales is prescribed. Rule 58 of Order XXI of the Code of Civil Procedure provides for the investigation of claims and objections to attachment on an application made by a person other than the judgment-debtor. Rule 89 of Order XXI of the Code of Civil Procedure makes provision for an application to set aside sale on deposit by any person either owning such property or holding interest therein by virtue of title acquired before such sale. Rule 91 of Order XXI of the Code of Civil Procedure gives power to the purchaser at auction sale to apply to the Court to set aside the sale on the ground that the judgment-debtor had no saleable interest in the property sold. In the Act there is no provision corresponding to rules 58, 89 and 91 of Order XXI of the Code of Civil Procedure.

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Mr. Sarv Mittar *Sikri* basing himself on the proviso to section 46(2) of the Income-tax Act urges that the Collector can investigate the claims of persons other than the defaulter under rule 58 of Order XXI of the Code of Civil Procedure. In my judgment the argument raised is misconceived for the simple reason that the Act does not give the person other than a defaulter *a right* to object to the attachment and sale for the recovery of arrears of land-revenue. Proviso to section 46(2) of the Income-tax Act reads—

“Provided that without prejudice to any other powers of the Collector in this behalf, he shall for the purpose of recovering the said amount have the powers which under the Code of Civil

Procedure, 1908 (V of 1908), a civil Court has for the purpose of the recovery of an amount due under a decree.”

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In my judgment, powers conferred on the Collector by the proviso to section 46(2) of the Income-tax Act are to be used by the Collector in proceedings which are permitted under Chapters VI and VII for the recovery of arrears of land-revenue.

Section 158 (2) (xiv) of the Act *excepts suits* provided by the Act from the prohibition contained in that provision of law. Those suits are provided by sections 78 and 158(2)(xv) of the Act.

From an examination of section 78 and section 158(2)(xiv) of the Act it is plain that those provisions apply to that person alone against whom the *writs* of demand for the arrears of land revenue realizable as such are issued. If so, section 158 (2) (xiv) of the Act does not refer to claims which may have a connection with the collection of revenue but are made by persons other than the defaulter.

Section 117 of the Act provides that when there is a question as to the title relating to any of the property of which partition is sought the Revenue Officer may decline to grant the application for partition unless the question has been determined by a competent Court, or he may himself proceed to determine that question as though he were such a Court. In case the Revenue Officer proceeds to determine the question of title himself an appeal from the decree passed by the Revenue Officer shall lie as though that decree was a decree of a Subordinate Judge in an original suit. In this state of the law, I think that section 158(2)(xiv) of the Act cannot be interpreted to bar a suit instituted by a person other than the defaulter to establish that the property proceeded against was not the property of the defaulter from whom land revenue was due.

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In *Radha Kishan v. Ram Nagar Co-operative Society through Anand Behari Lal* (1), a similar question arose for decision under section 233(m) of the U.P. Land Revenue Act, 1901. In deciding that question Malik, C. J. (Wali Ullah, Raghubar Dayal, Agarwala and Bhargava, JJ., concurring), said that suit by a person who is not a defaulter himself is not barred by section 233(m) of the U.P. Land Revenue Act, 1901. In that case the entire case law was reviewed and I do not think that I can usefully add anything to the comments made thereon by Malik, C. J.

Section 46(5-A) of the Income-tax Act provides *inter alia* that when a person to whom a notice under that subsection is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in section 46 of the Income-tax Act shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income-tax Officer.

Mr. F. C. *Mittal* basing himself on section 46(5-A) of the Income-tax Act points out that the Collector should not be regarded to possess larger powers than the Income-tax Officer when acting under section 46(2) of the Income-tax Act. In my judgment, the contention raised has force.

For the foregoing reasons, I find that the suit out of which the appeal has arisen was not barred by section 158(2)(xiv) of the Act.

No other point arises in Letters Patent Appeal No. 14 of 1952.

In the result, the appeal fails and is dismissed with costs.

Bhandari, C. J. BHANDARI, C. J.—I agree.