KRISHNASWAMI THEVAN v. PULUKARUPPA THEVAN.

DEVADOSS, J.

The next question is whether the first defendant is liable to account for the income. In a partition suit the managing member of the family is not liable to account for the income and profits; but in this case the plaintiff was not supported by the first defendant and all the income was enjoyed by the first defendant. The plaintiff had to be maintained by his maternal relations and it is but fair that he should get his share of the income from the date of the plaint. The Court has a discretion in this matter and I think this is a fit case in which the discretion should be exercised in favour of the plaintiff by giving him a moiety of the income from the date of plaint to the date of his being put in possession of his share of the property.

Respondents 2 and 3 were not represented in this Court, but I must say in fairness to Mr. Raja Ayyar that he presented his case very fairly before the Court.

The memorandum of objections is allowed with costs.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Wallace and Mr. Justice Madhavan Nayar.

1924, December 5.

VEERAPPA CHETTIAR (PLAINTIFF), PETITIONER,

v.

MUNICIPAL COUNCIL, PALNI (DEFENDANT), RESPONDENT.*

Madras District Municipalities Act (V of 1920), sec. 95— "Reside," meaning of.

A person who neither himself personally resides nor maintains a residence for himself or his family within the limits of a municipality but merely maintains an office for collection of rent accruing outside such limits does not "reside" within the

* Civil Revision Petition No. 413 of 1923.

municipality within the meaning of section 95 of the Madras District Municipalities Act (V of 1920), and is therefore not liable to be assessed to tax under that section.

PETITION under section 25 of Act II of 1887, praying the High Court to revise the decree and judgment of K. R. RAMAKRISHNA AYYAR, District Munsif of Palni, in S.C. No. 306 of 1922.

The facts are given in the judgment.

T. L. Venkatarama Ayyar for petitioner.—The income was derived solely from lands outside the municipality. Therefore section 93 does not apply. Income "from any other source" in section 93 must be *ejusdem generis* with "profession, trade or calling" and it cannot be mere ownership of lands for which section 81 makes provision. The words "inside the municipal limits" qualify "source" and "not houses and lands." Under the Local Boards Act the petitioner may be liable to be taxed under section 78 for the lands and it cannot be that for the same income he is liable to be taxed again. The income cannot even be said to be legally received inside the municipality, because *prima facie* they are received where they accrue, that is, outside the municipality; see *Board of Revenue* v. *Ripon Press*(1), *Aurangabad Mills, Limited*, In re(2), *Sundar Das* v. *Collector of Gujrat*(3). Even if section 93 applies, the petitioner is not liable because he has not resided himself within the municipality for sixty days, as required by section 95. Then again, as the Zamindari is permanently settled any further land-tax is *ultra vires*; see *Chief Commissioner of Income-tax* v. *Zamindar of Singampatti*(4), and the municipality cannot do what the State itself cannot. See Dillon on Municipal Corporations, Vol. VI, pp. 2395-2397.

K. V. Krishnaswami Ayyar for respondent.—Section 93 only requires receipt of income inside the municipality as the source of liability. That condition is satisfied and the levy is within the letter of the law. As for residence, it is found that the agent resides within the limits and carries on business. "Residence" is of vague significance and the question is whether the Act intended personal residence. The legislature might have said that "residence" does not include "carrying on business by the agent" but it did not say so; and rule 18 only

(1) (1923) I.L.R., 46 Mad., 705.
(2) (1921) I.L.R., 45 Bom., 1286.
(3) (1922) I.L.R., 3 Lah., 349 (F.B.).
(4) (1922) I.L.R., 45 Mad., 518.

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requires the existence of an office. Municipal tax is in the nature of a poll-tax and *Chief Commissioner of Income-tax v. Zamindar of Singampatti*(1) refers only to cases of land-tax.

T. L. Venkatarama Ayyar in reply.—Rule 18 applies in terms only to cases of carrying on a profession and not to cases of receipt of income without reference to a profession, in which case residence is required.

JUDGMENT.

The petitioner seeks for the revision of the decree of the lower Court in a Small Cause Suit instituted by the plaintiff to recover from the defendant, the Municipal Council of Palni, the amount of profession tax levied on him by the Council for the half-year ending 31st March 1922. The facts appear to be as follows:—The plaintiff is a Nāttukōttai Chetti, whose profession is money lending and he exercises that profession at Devakottai. He has purchased the Zamindari of Rettiampadi in the Palni taluk. This zamin is situated wholly outside the limits of the Palni municipality. The plaintiff maintains in Palni town a resident collection agent who collects his zamin rent for him. In these circumstances the lower Court has held that the plaintiff has through his agent been in receipt of income within the municipality and is therefore liable to be taxed for profession tax.

The legal correctness of this decision depends on the interpretation of sections 93 and 95 of the Madras District Municipalities Act. It is contended for the petitioner that he or his agent is not a person in receipt of income from "any source other than houses or lands inside the municipal limits," and it is sought to make the words "inside the municipal limits" qualify "source" and not "houses and lands." This view is untenable. There is no reason whatever why a person residing within the municipality and drawing income from rent

(1) (1922) I.L.R., 45 Mad., 518.

of houses outside it should not pay profession tax as he obtains the benefit of municipal activities in the same manner as any other resident. The phrase is clearly used in order to exempt a person from paying profession tax on rent from property inside the municipality, since he is already taxed on that under section 81.

We cannot say that the petitioner is not in receipt of this income. He admits that his agent collects it and remits it to him. He is therefore *prima facie* liable under section 93, if he has been in receipt of that income within the municipality for the period laid down in section 95. Section 95 lays down that, though a person may be liable for the tax under section 93, it is not payable unless he resides in the municipality for sixty days in the half-year in question. This proposition is not affected by the principle laid down in illustration (3) of section 93, because section 93 is only laying down the qualification for liability to tax and has nothing to do with the conditions under which the tax becomes payable. That is dealt with under section 95. This point has been overlooked by the lower Court and it has thus fallen into an error.

Now, the plaintiff in this plaint clearly stated that he never resided in Palni for sixty days in the half-year. In the written statement the Council did not controvert that statement. Had the plaintiff resided for sixty days in the half-year it would have been the most obvious answer to the plaintiff's suit. We must take it then that the plaintiff did not reside within the municipality for sixty days in the half-year in question.

The respondent has tried to argue that "residence" will include "the maintenance of an office" although the principal never appears there. No doubt the word "residence" has been interpreted in various ways when it has been necessary to interpret its meaning in income-tax

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and other Statutes; but we think that its meaning in this Act may be decided by a consideration of the reported rulings under the old District Municipalities Act of 1884, and the consequent alteration of the provisions in the new Act. Under the old Act, section 55, a person exercising a profession, etc., or holding an office was liable under section 53 to the tax, and had to pay it, if he exercised the profession or held the office for sixty days in the half-year. In the two rulings in *Chairman, Ongole Municipality* v. *Mounsey*(1) and *Hammick* v. *President, Madras Municipal Commission*(2), this Court held that a Government servant, whose head office was in the municipality, was not, while he was himself outside the municipality, holding his office within the municipality. So that, unless he himself was for sixty days within the municipality he was not liable to the tax. To meet that difficulty, we presume, the legislature provided in schedule IV, rule 18 of the new Act that a person must be deemed to have exercised a profession or held an appointment for the period specified in section 95

> "if his principal office is within the municipality and his connexion therewith has lasted for the specified number of days."

Under the old Act the test for liability in the case of a person holding an appointment was personal presence within the municipality; under the new Act, in such a case personal presence is not necessary. Had the legislature meant that, in the cases of persons in receipt of pension or income, personal presence in the municipality was equally not necessary, we think they would have made it equally clear. We think, therefore, that the test in such a case is personal presence within the municipality, and that "residence" in section 95 has to be interpreted in the sense of personal residence and

(1) (1894) I.L.R., 17 Mad., 453. (2) (1899) I.L.R., 22 Mad., 145.

that one who neither himself personally resides nor maintains a residence for himself or his family within the municipality but merely maintains an office for the collection of his rent cannot be said to reside within the municipality. The petitioner, on this ground, therefore will not be liable to pay the profession tax.

The petitioner raised a further ground of objection, namely, that since all his zamin land rents are already taxed to a fixed peshkash this peshkash cannot be increased by any further tax by Government, either directly by Government itself or indirectly by Government authorizing a municipality to tax such rent without a direct statutory declaration of its interference with his permanent sannad rights. He quoted *Chief Commissioner of Income-tax* v. *Zamindar of Singampatti*(1), in aid of his contention that the State cannot authorize a municipality to levy a tax which it cannot itself levy. This question is not free from difficulty but need not be decided in this case.

On the ground that the petitioner has not resided for sixty days within the municipality, the levy of a profession tax on him was contrary to law. We must hold that he was not liable for this tax and that the lower Court has made a mistake in law in dismissing this suit. We think this is a case in which we must interfere in revision. We reverse the decree of the lower Court and give the plaintiff a decree for the amount sued for with costs in both Courts.

N.R.

(1) (1922) I.L.R., 45 Mad., 518.