

Tribunal, constituted under the Income Tax Act, is a 'Court'. The learned judge, after elaborately discussing a number of authorities throwing light on this question, answered the question in the negative. The following passage in the judgment of the learned Judges, at page 808, is useful to assess the question in the present case also:--

"A definition of Court is to be found in troude's judicial Dictionary in which it is stated that a court is a place where justice is judicially administered. 'The difficulty the present juncture is created on account of the establishment of administrative Tribunals, which are vested with jurisdiction to decide certain matters of a quasi judicial nature. It is often a very difficult task to draw the line, and distinguish a court from an administrative tribunal exercising quasi judicial functions. Merely because the administrative tribunals have the trappings, of a court, they are not courts in the sense of exercising judicial power'".

With regard to the application of the provisions of the Limitation Act to proceedings before the Authorities who are creators of statutes, courts, including the highest in this land, have uniformly held that such statutory functionaries are not 'courts' so as to attract the provisions of the Limitation Act. In *Athani Municipality V. Labour Court, Hubli* AIR 1969 SC 1335-1970 1 SCJ. 1, the Supreme Court declined to apply the provisions of the Limitation Act to an application under section 33-C(2) of the Industrial Disputes Act. At page 1343 of the report, the relevant passage reads as follows:--

"One factor atleast remains constant and that the applications must be to courts to be governed by the articles in this division. The scope of the various articles in this division cannot be held to have been so enlarged as to include with them applications to bodies other than Courts, such as a quasi-judicial tribunal, or even an executive authority. An Industrial Tribunal or a Labour Court dealing with applications or references under the Act are not courts and they are in no way governed either by the code of Civil Procedure or the Code of Criminal Procedure".

The same view has been reiterated in *Nityanand, V LL.C., of India* A.I.R. 1970 Section 209.

In *Nagireddy V. Khandappa* A.I.R. 1970 Mys. 66, a division Bench of the Mysore High Court dealt with the questions as to the

applicability of Section 5 of the Limitation Act to an application filed before the Munsiff under Rule 17 of the Mysore Village Panchayats (Election of the Chairman and the Vice Chairman) Rules, 1959. The Bench held that the Munsiff, functioning under the Rules is only persons designated and hence the provisions of the Limitation Act cannot be invoked. In Bando Banaji V. Bhaskar Balaji A.I.R. 1972 Mys. 311 another Division Bench of the Mysore High Court held that the Tribunal under the Mysore Land Reforms Act, 1961 is not a court and the Division Bench relief on the decisions of the Supreme Court referred to above.

In Ganapathy V. Kumarasami 1975 II MLJ 1971, the question posed before Gokulakrishnan J. was as to whether the provisions of the Limitation Act could be invoked for the purpose of the proceedings before the Appellate Authority under the Tamil Nadu Buildings (lease and rent control) Act, (Act XVIII 1960). The learned judge, after considering the provisions of Act, XVIII of 1960 in the light of the judicial pronouncements, found that the Appellate Authority is a creature of status and he is only a person applied to proceedings before him.

In Commissioner of Sales Tax Vs. Person Tolls and Plants 1975 35 S.T.C. 413, the Supreme Court held that the Appellate Authority and the Judge (Revisions), Sales Tax, exercising jurisdiction under the Sales Tax act are not 'Court's but are merely administrative tribunal.

In Sushila Devi V. Ramanadan Prasad - A.I.R. 1976 SC.177-1976 (a) SCR 845, the Supreme Court was concerned with an application under section 3 of Kosi Area (Restoration of Lands to Raiyats) Act, (30 of 1951), on the question as to the applicability of Section 5 of the Limitation Act to such an application, the Supreme Court observed as follows, at page 182:—

"We do not see how section 5 could be invoked in connection with the application made on October, 17, 1975 by the first respondent, Under section 5 of the Limitation Act an appeal or application 'may be admitted after the prescribed period if the appellant or applicant sufficient cause for not preferring the appeal or making the application within such period. The Collector to whom the application was made was not a court, though section 15 of the Act vested him with certain specified powers under the Code

of Civil procedure, also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise".

In Nachimuthu Gounder V. Kanagarathnam, C.R.P. No. 838 of 1975 1977 TLNJ 393, Ramaprasada Rao, J. as he then was, was meeting the argument that in respect of an application for restoration under Section 4(5) of the Tamil Nadu Cultivating Tenants Protection Act, Act XXV of 1955, Section 5 of the Limitation Act, can be taken aid of. The learned judge found that the Revenue Division Officer of Revenue Court is not a 'Court', even though it has the trappings of a court in that certain provisions before it. In that view, the learned judge negatived the plea for application of the Limitation Act to such proceedings before such forums.

Coming to the present Act, the constitution of the Authorised Officer under section 3(5) of the Act seems to be on terms of similar to the constitution of the controller under the Tamil Nadu Buildings (Lease and Rent Control) Act, Act XVIII of 1980, Section 3(5) of the Act reads as follows:--

"Authorised Officer means any Gazetted Officer authorised by the Government by notification to exercise the powers conferred on, and discharge the duties imposed upon the Authorised Officer under this Act for such area may be specified in the notification".

The scope of the powers conferred on the Authorised Officer does not make them Judicial and the decisions which he has to give under the provisions of the Act cannot be equated to Judicial decisions of courts. The following passage in Cooper V Milson (1937) K.B. 309 sufficiently lays down the position as to what would constitute a true judicial decision.

A true judicial decision presupposes an existing dispute between the two or more parties and then involves four requisites:

1. The presentation (not necessarily orally) of their case by the parties to the dispute.
2. If the dispute between them is a question of fact, the ascertainment of the fact by means of evidences adduced by the parties to the dispute and often with the assistance of argument by or on behalf of the parties on the evidence.
3. If the dispute between them is a question of law, the submission of legal arguments by the parties, and

4. A decision which disposes of the whole matter by a finding upon the facts in dispute and an application of the law of the land to the facts so found, including where required a ruling upon any disputed question of law.

In this context, it would be pertinent to refer to Section 11 of the Act with regard to the scope of the powers of the Authorised Officer to decide questions of title in certain cases. It says that he has got powers to decide such questions summarily and that summary order could be the subject matter of a regular suit under sub-section. (3) Whenever the decision involves a substantial question of law or of fact, the Authorised Officer is enjoined to refer the matter to the Land Tribunal for its decision. This is embodied in Section 11(2), 16(3)(a), (iv) and 51(3) of the Act. This definitely does not satisfy the Court requisite contemplated in *Cooper V. Nilson* (10). It is brought to my notice that Rule 11 of the Rules framed under the Act invokes certain provisions on the Code of Civil Procedure to govern the procedure to be followed by the Authorised Officer. This would not alter the position. There is no warrant for holding that a statutory functionary, who is not a 'court' would become a 'court' merely because some or the other of the procedural provisions of the Code of Civil procedure would govern the conduct of proceedings it. As pointed out in *Sushila Devi V. Ramanadan Prasad* (8) A.I.R. 1976 SC 177 and *Nachimuthu Gounder V Kannagarathanam* C.R.P. No.838 of 1976 (9) 1977 - T.N.L.U. 393 merely because the statutory functionary has the trappings of a court by the investiture of the procedural powers under the code of Civil Procedure, it cannot be equated to a 'court'. It is significant to note that Rule 11 lays down that the proceedings of the Authorised Officer shall be summary. Section 20 of the Indian Penal Code defines 'Court of Justice' as under:

'the words 'court of justice' denote a judge who is empowered by law to action judicially alone, or a body of judges which is empowered by law to act judicially as a body, whom such judge or body of judges is acting judicially' Section 19 of the Indian Penal Code defines 'Judge' as follows:--

'The word 'Judge' denotes not only every person who is officially designated as a judge, but also every person.

Who is empowered by law to give in any legal proceedings, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of person is empowered by law to give such a judgment'.

The following passage in *Brajandan Sinh V Jyoti Narai* (ii) 1955 2 S.C.R. 955 AIR 1956 SC 661 the points.—

The pronouncement of a definitive judgment is thus considered the essential sine quo non of a court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicted that he or they constitute a court'.

In view of the provisions of the Act, it is not possible to hold that the Authorised Officer gives any definitive judgment on the substantial questions of law or of fact.

The only conclusion which could emerge from the proceedings discussion is, the Authorised Officer under the Act cannot be equated to a 'court' or a 'Court of Justice' for the purposes of Section 213(1) of the Indian Succession Act. If this position is accepted, then it would not be proper to insist upon the satisfaction of the requirements under section 213 of the Indian Succession Act with regard to the Will in question.

The second ground on which the Land Tribunal declined to accept the will is that under Section 68 of the Evidence Act, the will must be proved and before the Authorised Officer by calling atleast one attesting witness. The argument of Mr. K. Parasaran, learned counsel appearing for the petitioner is that the Authorised Officer could not also fall within the definition of a 'court' under the Evidence Act and hence to invoke the provisions of the Evidence Act for the purpose of proof or the will in question in a misconception. I am not able to appreciate and accept this submission of the learned counsel in view of the implications of the provisions of the Evidence Act. Section 1 of the Evidence Act stated that the Act applies to all judicial proceedings in or before any court. Section 3 of the Evidence Act defines 'court' in the following terms:

"Court includes all Judges and Magistrates and all persons except arbitrators, legally authorised to take evidence".