**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA No. 69 of 2013 (O&M)

Date of decision : 9.3.2015

Gurinder Singh Sodhi .. Appellant

versus

Municipal Council, Moga .. Respondent

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Ms. Harsimran Kaur, Advocate for
Mr. Mandeep K. Sajjan, Advocate, for the appellant.

Rajesh Bindal, J.

The plaintiff is before this Court against the concurrent findings of fact recorded by both the Courts below, whereby the suit filed by him for mandatory injunction seeking a direction to the respondent-defendant for refund of ₹ 7,008/-, deposited vide receipt no. 16 bearing book no. 2559 dated 29.12.2005 along with interest, which was paid on account of house tax and further challenging the recovery of house tax for the period 1996-97 to 2004-05 and 2005-06.

Both the Courts below did not find any merit in the case set up by the appellant, hence, dismissed the suit. Aggrieved against the judgments and decrees of both the Courts below, the appellant is before this Court.

The grievance raised by the appellant before the courts below was that before raising the demand and effecting recovery, the plaintiff-appellant was not afforded due opportunity. The house was lying vacant. In fact, before sale of the house, the amount of tax was paid under protest.

After hearing learned counsel for the appellant, I do not find any reason to interfere with the concurrent findings of fact recorded by both the Courts below.

The Trial Court framed the following issues:-

"(i) Whether the plaintiff is entitled to get the relief of mandatory injunction, as prayed for? OPP

(ii) Whether the jurisdiction of the civil court is barred under the Punjab Municipal Act? If so, its effect? OPD

(iii) Relief."

It has been noticed by the learned Lower Appellate Court that while appearing as PW1, the appellant admitted in his cross-examination that he never filed objection regarding the house tax. Hence the argument to claim that the amount was paid in duress or under protest cannot be sustained. Nothing was produced on record by the appellant that he ever made any application to the respondent seeking exemption from payment of house tax. The assessment of house tax was never challenged by availing remedy of statutory appeal under Section 84 of the Punjab Municipal Act, 1911. In fact, it was the admitted case of the appellant that before selling the house. he went to the respondent and paid the arrears of house tax and obtained no due certificate.

From the aforesaid facts, it is clear that the appellant did not have objection to payment of house tax at the stage when he sold the house in question but thereafter sought to get the same back by filing the present suit, which has been found to be totally frivolous by both the Courts below. Findings recorded are pure and simple findings of fact. No substantial question of law arises. Accordingly, the appeal is dismissed. Consequently, the applications are also dismissed.

9.3.2015 (Rajesh Bindal)
vs Judge