

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.11.2016

PRONOUNCED ON : 18.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1235 of 1991

1.State of Tamil Nadu rep. By
its Collector, North Arcot
District At Vellore

2.The Additional Deputy Commissioner,
(Excise) Vellore.

3.The Taluk Excise Officer,
(Incharge), Vaniyambadi. ...Appellants/Defendants

Vs

1.R.D.Munusamy Gounder (deceased)

2.Saraswathi

3.Sivasakthi

4.Umavathi

5.Revathi

6.Sathiyarayanan

7.Sakthivel

8.Giriraj

... Respondents/Plaintiffs

R2 to 8 are brought on
record as LR of the deceased
Sole Respondent Vide order
dated 15/6/2004 made in
CMP No.18518 to 18520 of 2002

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the Additional District Court, Vellore in A.S.No.2 of 1990 dated 20.06.1990 reversing the decree and judgment of the Additional District Munsif Court, Vellore in O.S.No.214 of 1984 dated 09.11.1989.

For Appellants : Mr.M.Venugopal,
Special Government Pleader (CS)

For R.1 : Died

For RR2 to 8 : Not ready notice.

JUDGMENT

This appeal is directed against the judgment and decree of the First Appellate Court passed in A.S.No.2/1990 reversing the finding of the trial Court.

2.The brief facts of the case is that the plaintiff, one Mr.R.D.Munusamy Gounder was a successful bidder for toddy shop bearing No.56 Manjakuppam Village, Vaniambadi Taluk, in the auction held for the year 1982-1983. The licence fee was fixed at Rs.1570/- per month and he was supposed to pay three months vending fee in advance. But, he did not receive any notice to that effect. Meanwhile, he fell sick due to diabetic and was confined to bed between 15.06.1982 and 17.07.1982. While so, he was served with notice on 09.03.1983 wherein, by earlier proceeding of the District Collector, the first defendant asked the plaintiff to pay Rs.7130.30 since, the demand notice was served without any enquiry, and the re-auction of the shop was conducted without canceling and informing the plaintiff alleging the demand notice as illegal sought for declaration that the demand notice issued for Rs.7130.30 does not bind him and that he should not be forced to pay. Also permanent injunction restraining the other defendants from enforcing the proceeding passed by the first defendant.

3.The District Collector; The Additional Deputy Commissioner (Excise) and the Tahsidar in charge of Excise who were the defendants 1 to 3 in their written statement, have submitted that the suit is not maintainable under law. The plaintiff was a successful bidder for vending toddy in shop No.56 at Manjakuppam Village. He was supposed to deposit 2 ½ months licence fee, in advance, which he did not deposit. Instead, vide his letter dated 20.06.1982, he sought for cancellation of the licence. Thereafter, the shop was re-auctioned to one Mr.Gnanamani for the bid amount of Rs.975/-. As per law, the plaintiff is responsible for the loss incurred to the Government due to the difference in bidding amount and therefore, he was served with notice demanding Rs.7130.30.

4.The trial Court after considering the evidence let in by the respective parties, appreciating Exs.A.1 to A.3, and B.1 to B.4, has held that looking at any angle, the plaintiff who was the successful bidder for the Toddy shop No.56 for Rs.1570/- had expressed his inability to run the shop and has withdrawn himself from the race after being the successful bidder. This has forced the defendants to re-auction the shop for a lesser amount and as per the tender condition and the law governing to the Tamil Nadu Toddy Act, the plaintiff is liable to pay the loss incurred by the Government.

5.In so far as the bar under the Civil Courts under Section 56 A of the Tamil Nadu Prohibition and Excise Act, which oust the jurisdiction of the Civil Court in proceeding issued by the appropriate authorities, in respect of any recovery of sum or fee levied in consideration of grant of privilege, the trial Court has found that the plaintiff has right of appeal before the Commissioner Prohibition against the impugned order and therefore, the Civil Court has no jurisdiction to entertain the suit. Accordingly, the trial Court dismissed the suit.

6.On appeal, the First Appellate Court after re-appreciating the evidence and the provisions of the law governing the facts of the case, has held that Section 56A & B of the Prohibition Act does not bar the suit of this nature. Furthermore, the First Appellate Court has held that under Rule 16 of the Tamil Nadu Toddy and Arrack (Disposal in Auction) Rules 1981, immediately after the auction, the State shall issue notice to the auction purchaser accepting provisionally the bid and demand to pay 2 ½ months licence fee as advance. Since, there was no material evidence placed by the defendants to that effect, the contract was not concluded between the plaintiff and the defendants. Therefore, without executing necessary notice and confirmation of the auction, the plaintiff cannot be mulched with penalty for the breach of auction condition.

7.At the time of admission of this second appeal, the following substantial questions of law were framed:-

"1.Whether the lower appellate court has correctly interpretes Section 56A(1) of the Tamil Nadu Prohibition Act, 1957, which bars grant of permanent injunction by Civil Court ?

2.Whether the respondent is not bound by Rule 16 of the Tamil Nadu Toddy and Arrack (Disposal in Auction) Rules, 1981 ?

3. Whether the lower Appellate Court has correctly considered the condition 18 of the sale notification ?”

8. Sections 56 A & 56-B of the Tamil Nadu Prohibition Act, 1937 are extracted below:-

“56-A. Injunctions not to be granted in respect of sums payable in consideration of the grant of any privilege or fee on licences for manufacture, etc., -Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act V of 1908) or in any other law for the time being in force, no Court shall grant any permanent or temporary injunction or make any interim order restraining any proceeding which is being or about to be taken for,

(i) the recovery of any sum or fee or both levied in consideration of the grant of any exclusive or other privilege under this Act or the rules made thereunder or any fee including vend fee or any duty levied by or under this Act or the rules made thereunder;

(ii) the grant of any privilege under section 17-C or licence under section 17-B.

56-B. Bar of jurisdiction of Civil Courts.-No Civil Court shall have jurisdiction in respect of any matter which the Commissioner or other officer or the Tamil Nadu State Marketing Corporation Limited or other authority empowered by or under this Act has to determine and no injunction shall be granted by any Court in respect of any action taken or to be taken by such Commissioner, officer, Corporation or other authority in pursuance of any power conferred by or under this Act.”

9. Rule 16 of the Tamil Nadu Toddy and Arrack (Disposal in Auction) Rules 1981 is under:-

“16. Deposit of advance.- The Sale Officer, if he accepts provisionally the bid of the auction purchaser, shall issue a notice to the auction purchaser to pay as advance; in any case within seven days from the date of the sale, an amount equal to three months rental in addition to the

earnest money deposit already made under rule 8 but inclusive of the half of month's rental paid at the close of the sale under rule 15."

10.The First Appellate Court after applying these two provisions to the fact of the case, has found that though the plaintiff was the successful bidder for the shop No.56 Mallankuppam Village and the bid amount was fixed at Rs.1570/- per month. The auction was not confirmed and informed to the plaintiff in the manner known to law and the procedure established under the auction Rules. By quoting Rule 16 of the Tamil Nadu Toddy and Arrack (Disposal in Auction) Rules 1981, the First Appellate Court has recorded its finding that the defendants have not produced any document to show that the bid of the plaintiff is confirmed. Successful bidder in an auction is something like an offer, unless it is confirmed by the defendants by way of acceptance, the contract does not get conclude. In pursuance of the said Rule, the plaintiff is liable to deposit 2 ½ month fee in advance and the defendant should have issued a demand notice. That is the reason why the First Appellate Court gone through the evidence has found that without confirmation of the auction, it cannot be presumed that the offer has been accepted by the plaintiff and he is bound by the other terms and conditions of the Rules and Act.

11.In the opinion of this Court, the First Appellate Court has rightly interpreted Section 56A & B of the Tamil Nadu Prohibition Act and held that it is applicable only when the relationship of vendor and vendee is confirmed and comes into existence. Before even confirmation of auction in the manner known to law and same made known to the auction purchaser, the provisions of Section 56 A & B of Tamil Nadu Prohibition Act cannot be applied and it will be premature to apply those provisions when the licence itself was not granted to the plaintiff.

12.Section 56 A & B deals with recovery of any sum or fee or both levied in consideration of the grant of any exclusive or other privilege under the Tamil Nadu Prohibition Act. When the plaintiff's claim that even before any privilege or exclusive grant given to him, he has withdrawn the bid. There is no contra evidence let in by the defendants to disprove this averment. Therefore, this Court hold that the plaintiff has right to file the suit. Section 56A & B is not a bar for the plaintiff to approach the Civil Court in the given facts and circumstances. The proceeding of the defendants which is the subject matter of the suit liable to be declared as unenforceable against the plaintiff, for want of adherence to the procedure established under the Tamil Nadu Prohibition Act and Rule 16 of the Tami

Nadu Toddy and Arrack (Disposal in Auction) Rules, 1981 and notification framed thereunder. Hence, this Court finds no merit in this second appeal. Accordingly, the second appeal is dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The Additional District Munsif Court,
Vellore.

2.The Additional District Court,
Vellore.

3.The Section Officer,
VR Section, High Court, Madras.

+1cc to the Special Government Pleader Sr.67546

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srg 02/01/2017

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