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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2016

CORAM :

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

Second Appeal (MD) No.585 of 2013

and

M.P.(MD) No.1 of 2013 and C.M.P.(MD)No.8800 of 2016

M/s.Ragav Advertisement Company,  
through its Proprietor K.Balavenkatalakshmi,  
Palayamkottai,  
Tirunelveli District. ... Appellant/Appellant/Plaintiff

-Vs-.

1. The Tirunelveli City Municipal Corporation,  
Through its Commissioner,  
Tirunelveli.
2. The State of Tamil Nadu,  
Through District Collector,  
Tirunelveli,  
Tirunelveli District. ... Respondents/Respondents/  
Defendants

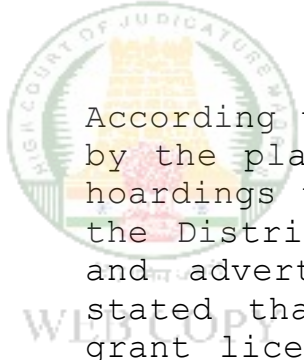
**Prayer:** Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree passed in A.S.No.5 of 2011 dated 24.09.2012 on the file of learned III Additional District and Sessions Judge, Tirunelveli confirming the judgment and decree passed in O.S.No.133 of 2007, dated 30.07.2010 on the file of the learned Principal Subordinate Judge, Tirunelveli.

|                  |                            |
|------------------|----------------------------|
| For Appellant    | : Mr.S.Pon Senthil Kumaran |
| For Respondent 1 | : Mr.Aayiram K. Selvakumar |
| For Respondent 2 | : No Apperance             |

### JUDGMENT

This Second Appeal has been filed by the unsuccessful plaintiff in O.S.No.133 of 2007 on the file of the Principal Sub Court, Tirunelveli, for permanent injunction restraining the defendants from forcibly removing the advertisement boards mentioned in the suit schedule except under due process of law. The five permanent hoardings put up by the plaintiff / appellant at important locations within the jurisdiction of the respondent corporation are shown in the schedule.

2.It is the case of the plaintiff / appellant that the appellant is running an advertisement company in Tirunelveli and that the plaintiff / appellant, by promoting his business, has got rich experience in advertisement technology.



According to the plaintiff / appellant, the five hoardings erected by the plaintiff / appellant were for their clients and that the hoardings were erected only after an application was filed before the District Collector to give them licence to fix the hoardings and advertisement boards. The plaintiff / appellant further stated that they bona fide believed the second defendant to grant licence. However, according to the plaintiff / appellant, the second defendant had not proceeded further to consider the application submitted by the plaintiff / appellant and to grant licence. It is the further case of the plaintiff / appellant that the second defendant is the competent authority for the grant of licence to instal hoardings and that the hoardings can be removed only by the second defendant. It was further submitted by the plaintiff / appellant that the first defendant Corporation have taken steps for the removal of hoardings without even issuing a show cause notice and hence, the plaintiff / appellant was constrained to file the said suit.

3.The suit was contested by the first defendant respondent specifically denying the stand taken by the plaintiff / appellant that the hoardings were put up by the plaintiff / appellant only after applying for permission from the second defendant. It was the further case of the first defendant that the first defendant is competent to grant licence as per the Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003 and to take action under the rules and that therefore, it cannot be said that the municipal corporation has no right to take action against unauthorised hoardings.

4.In this context, the learned counsel for the respondents relied on Section 162 of the Coimbatore City Municipal Corporation Act, which is also applicable to the first respondent corporation. Section 162 reads as under:

**"162. Removal of unauthorized advertisement.** - If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of Section 158 or Section 159 or after the written permission for the erection, exhibition, fixation or retention thereof for any period shall have expired or become void, the commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon or over which same is erected, exhibited, fixed or retained to take down or remove such advertisement or may enter any building, land or property and have the advertisement removed."

5.Finally, the learned counsel for the first respondent submitted that the trial Court dismissed the suit holding that the plaintiff / appellant has not proved the fact that they had obtained permission or applied for permission from the second



defendant / second respondent, to prove their bona fide. When the plaintiff / appellant admitted that he has not obtained licence, they cannot be allowed to take advantage of their own flaw to sustain their claim. The trial Court has categorically given a finding against plaintiff / appellant that the plaintiff / appellant has not established his stand that hoardings were erected in lawful manner after getting permission. The lower appellate Court also fell in line with the trial Court and dismissed the appeal when the plaintiff / appellant filed an appeal in A.S.No.5 of 2011 on the file of the III Additional District Judge, Tirunelveli. Aggrieved by the same, the plaintiff / appellant has filed the above Second Appeal.

6.The learned counsel for the plaintiff / appellant raised the following questions of law in the memorandum of grounds:

a) Whether the courts below are right in denying the relief of permanent injunction in spite of overwhelming evidence to show that the first respondent has no authority to remove the hoardings erected by the appellant as per Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003?

(b) Whether the courts below are right in denying the relief when the licensing authority namely the second respondent failed to file written statement?

(c) Whether the Courts below are justified in not drawing adverse inference against the second respondent under Section 114 of the Indian Evidence Act?

(d) Whether the courts below are justified by holding that non production of copy of 'Application form' seeking licence by the appellant is fatal when the same is not denied by the second respondent by filing written statement or entering witness box?

7.Having regard to the fact that Section 162 of Coimbatore City Municipal Corporation Act clearly authorise the municipal corporation to initiate proceedings for the removal of unauthorised hoardings and that the plaintiff / appellant has not produced any evidence to show that they had erected the hoardings, after getting permission from the District Collector as contemplated, the plaintiff / appellant has no right to erect hoardings under the provisions of Tamil Nadu Urban Local Bodies Licensing of Hoardings and Levy and Collection of Advertisement Tax Rules, 2003. In the above factual matrix, if we examine the substantial questions of law raised in this appeal, none of them survive.



8. In view of the factual findings rendered by the Courts below on the material issues, there is no scope for entertaining this second appeal. Unless there is a substantial question of law, there is no scope for entertaining this second appeal. Since the judgments of the Courts below are supported by reasons and there is application of mind with regard to the issues, pleadings and evidence both oral and documentary, I am not inclined to interfere with the findings of the Courts below and the second appeal is, therefore, deserves dismissal.

9. The materials on record disclose in this case that the plaintiff / appellant is continuously having the hoardings in the places shown in the schedule. Even when the suit was filed in 2007, the hoardings were erected. It is only by virtue of the interim order obtained in the suit, it appears that the hoardings were not disturbed. The learned counsel for the plaintiff / appellant pointed out that principles of natural justice cannot be dispensed with and that the attempt to remove the hoardings without issuing notice to the plaintiff / appellant is improper. However, the learned counsel for respondents submitted that the appellant who had illegally erected the hoardings without permission is not entitled to any relief in equity and that the appellant has managed all these years to earn huge profit without any payment towards lease / permission. A person who has unauthorisedly erected the hoardings in violation of statutory provision cannot be granted the discretionary relief of injunction. However, if the appellant pays the licence fee and all other charges for the period from 2007, this Court feels that it would be in the interest of respondent corporation to levy and collect all the charges from the appellant for the period from 2007 to till date. If the appellant pays the amount which the respondents are entitled to in law for the past period within fifteen days from the date of service of the notice of such demand, the respondents shall regularise the erection of hoardings upto this date. The appellant is directed to apply for permission / licence for erection of hoardings in future and the respondents are at liberty to consider the application and pass appropriate orders and take necessary action as they deem fit and proper dependent upon their decision either to grant licence or to remove the hoardings. If the plaintiff / appellant does not pay the amount demanded, it is open to the respondents to proceed with any removal action. If any payment is made to the Corporation by the plaintiff / appellant during the pendency of these proceedings i.e., right from the date of initiation of the suit till this date, the same also can be given credit to.



10. Subject to the above observations, the Second Appeal is dismissed. However, there is no order as to costs. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

To

1) The III Additional District and Sessions Judges,  
Tirunelveli.

2) The Principal Subordinate Judge,  
Tirunelveli.

+1cc to Mr.S.Pon Senthil Kumaran, Advocate, SR.No.67173

+1cc to Mr.Aayiram K.Selvakumar, Advocate, SR.No.67368

**Judgment made in  
Second Appeal (MD) No.585 of 2013  
09.11.2016**

srm

SH/RR/ME:20.1.2017:5p:5c