

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.766 of 2015

The Commissioner,
Coimbatore City Municipal Corporation,
Coimbatore rep. By its
Commissioner,
Big Bazaar Street,
Coimbatore - 641 018. ... Appellant/Defendnat

Vs

Sri Vasavi Kanniga Parameswari
Temple, Coimbatore
rep. By its President and Trustee
D.R.Suresh Babu ... Respondent/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 16.10.2014 made in A.S.No.27 of 2014 on the file of the III Additional Subordinate Judge, Coimbatore, reversing the judgment and decree passed in O.S.No.653 of 2007 dated 21.08.2012 by the II Additional District Munsif, Coimbatore.

For Appellant .. Mr.K.Magesh
For Respondent .. Mr.C.Jagadish

JUDGMENT

The defendant is the appellant and seeking to reverse the judgment and decree rendered by the lower appellate Court in decreeing the suit, the appellant has preferred this second appeal.

2.At the time of admission, the following substantial questions of law were framed:

(i)Whether the lower appellate Court is right in decreeing the suit filed by the respondent since there is no cause of action for the same?

(ii)Whether the lower appellate Court is right in

decreeing the suit as against the statutory authority, namely the appellant Corporation which is entitled to collect property tax from the premises situated within the Corporation limits?

(iii) whether the lower appellate Court is right in declaring that the respondent suit premises exempted from paying any property tax?

3. The appellant/defendant issued a notice of demand by way of revision. It was preceded by a public notice. The respondent/plaintiff has contended that it being a temple is entitled for exemption from the purview of the Coimbatore City Municipal Corporation Act (for short 'the Act') whereas the appellant contended that the activities being commercial, such an exemption is not available under Section 126 (A) of the Act. The trial Court dismissed the suit on the premise that the respondent was aware of the general public notice issued and under Section 126 (A) of the Act, exemption is available only for a charitable or public purpose and therefore, not for commercial activities. The lower appellate Court reversed the judgment and decree of the trial Court both on the question of maintainability and on merit. It held that the respondent/plaintiff has obtained two decrees earlier against similar notices and therefore, the suit is maintainable. Incidentally, it has been held that the appellant/defendant has not proved that the respondent/plaintiff is not entitled for exemption. It is to be noted that the trial Court has held earlier that the suit is not maintainable since the respondent/plaintiff has approached the Taxation Appellate Tribunal under Section 129 of the Act. Challenging the same, the present second appeal has been filed.

4. Learned counsel appearing for the appellant submits that in view of the provisions contained in Section 129 read with 169 G of the Act, the remedy available to the respondent/plaintiff is to approach the Taxation Appellate Tribunal. The respondent/plaintiff was subject to tax earlier. It is only an enhancement of tax and therefore the question of exemption is not an issue. The lower appellate Court has wrongly fixed the onus on the appellant. Thus interference is required and the substantial questions of law will have to be answered in favour of the appellant.

5. Learned counsel appearing for the respondent/plaintiff, placing reliance upon the decisions rendered by the Principal Bench of this Court as well as the Madurai Bench of this Court in (1) The Municipal Corporation of Coimbatore Vs. Govindasamy Naidu Hospital (2004 (2) CTC 155), (2) Abirami K.R. Vs. The Kumbakonam Municipality (2008 (1) CTC 791) and (3)

Mangayarkarasi Vs. The Kumbakonam Municipality (2009 (5) CTC 220), submits that the suit is maintainable, in view of no express bar under the statute. As no evidence was let in by the appellant, the lower appellate Court has rightly reversed the judgment and decree of the trial Court. Thus, no interference is required.

6. There are two issues involved in this appeal. One is with respect to the maintainability of the suit and secondly on the merits. Though this Court finds that the approach of the lower appellate Court is perverse in fixing the onus on the appellant/defendant to prove that the respondent/plaintiff is not entitled for exemption, it is inclined to go into the first issue with respect to the maintainability of the suit. It is not as if the respondent/plaintiff was not aware of the general revision which was preceded by a public notice. The lower appellate Court has committed an error in holding that the earlier two suits have been decreed and therefore, it is not open to the appellant/defendant to raise the question of maintainability. It is to be seen that earlier two suits have been decreed ex parte. An ex parte decree is a decree but that will not prevent the defendant, in a subsequent suit resulting from a fresh cause of action, from raising the plea of maintainability. A bar under Section 9 C.P.C. can either be express or implied. The Appellate Tribunal is constituted with a Judicial Officer in the cadre of Subordinate Judge. It is not as if in all circumstances the suit is maintainable. There may be a situation in which a suit can be maintained viz., when there is a total lack of procedure or a demand is void ab initio. Such a situation would also arise in a case of gross abuse of principles of natural justice. Unfortunately, it is not the situation in the present case. Therefore, the decisions relied upon by the learned counsel for the respondent/plaintiff do not apply to the case on hand. We are not concerned with the lack of jurisdiction as considered by this Court in the decision rendered in Shanmuga Nadar Vs. The Corporation of Madurai by its Commissioner ((1980) 2 MLJ 140), wherein, it was held that if the levy based upon the market value is not authorised by law, the same can be questioned in Civil Forum. In Abirami K.R. Vs. The Kumbakonam Municipality (2008 (1) CTC 791), this Court considered the effect of non-compliance of Rule 9 of the Taxation Rules to Schedule IV of the Tamil Nadu District Municipalities Act, 1920.

7. Thus considering the facts involved, this Court is of the view that the third substantial question of law is liable to be answered in favour of the appellant to the effect that the suit is not maintainable on the facts of this case. Incidentally, the other two substantial questions of law are not necessary to be considered.

8. Accordingly, the judgment and decree of both the Courts are set aside with liberty to the respondent/plaintiff to file statutory appeal before the Taxation Appellate Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment. As and when such an appeal is filed, the Appellate Tribunal shall decide it on its own merits without being influenced by any of the observations made in this appeal.

9. In the result, the second appeal is allowed. No costs.

Mmi

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The III Additional Subordinate Judge,
Coimbatore.
2. The II Additional District Munsif,
Coimbatore.

Copy to:
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.K. Magesh, Advocate, S.R.No.4764
+1cc to Mr.C. Jagadish, Advocate, S.R.No.6496

pa (CO)
md(27/02/2017)

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