IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 05.12.2017
PRONOUNCED ON:18.12.2017
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A. No.436 of 2002

A.G.Syed Miodeen Marcair ... Appellant/Plaintiff

Vs.

Cuddalore Municipality,
Rep by its Commissioner,
Municipal Office,
Bharathi Road,
Cuddalore 1.
... Respondent/Defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 31.08.2001 in A.S.No.41 of 2000 on the file of Principal Sub Court, Cuddalore confirming the judgment and decree dated 26.06.2000 passed in O.S.No.133 of 99 before Principal District Munsif's Court, Cuddalore.

For Appellant : Mrs.R.Meenal

For Respondent : No appearance

J U D G M E N T

Challenge in the second appeal is made to the judgment and decree dated 31.08.2001 passed in A.S.No.41 of 2001, on the file of the Principal Sub-ordinate Court, Cuddalore, confirming the judgment and decree dated 26.06.2000 passed in O.S.No.133 of 1999, on the file of the Principal District Munsif Court, Cuddalore.

2. Parties are referred to as per their rankings in the trial court.

3. Suit for declaration and permanent injunction.

4.The case of the plaintiff, in brief, is that the suit property belongs to the plaintiff and the property was originally assessed to half yearly tax of Rs.1,308.20/- and subsequently, the same had been raised to Rs.5,349/- per half year, commencing from 01.04.1991 and the determination of the above said tax is not proportionate to the rent derived from the property and also the market value of the property and the same had been determined without following the procedure prescribed under the Act and on the representations given by the plaintiff, the half yearly tax was reduced to Rs.3,328/- from the second half of 1994 and accordingly, the plaintiff has been paying the reduced tax, however, even the reduced tax is wholly disproportionate and the reduction of the tax was also not done by the defendant in accordance with law and the defendant has not determined the correct value of the rental value and also the market value of the property as such and further, the defendants have also not taken into consideration, the various amenities fitted in the property, for which the tenant is paying separate amount which cannot be included towards the rental amount. The rent received by the defendant is only Rs.550/- per month and hence, even the reduced half yearly tax Rs.3,328/- is exorbitant and further, the defendant has wrongly assessed the property tax twice by separately valuing the rear portion of the property, as if the same is facing No.25, Pallivasal Street, Cuddalore,O.T and however, the plaintiff does not own any such door number and the said assessment of the backward portion of the defendants is wholly illegal and the defendant is not entitled to make two assessment for one single property and hence, according to the plaintiff, the demand notice issued by the defendant for the assessment of the property twice by giving the two different properties is illegal and ultravires. Hence, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendant, in brief, is that no doubt the suit property was originally assessed to half yearly tax at Rs.1,308.20/- and subsequently, it was enhanced to Rs.5349/- per half year from 01.04.1991 and later, it was reduced to Rs.3,328/- from the half year of 1994. The tax was assessed by following the provisions of the District Municipalities Act and fixed as per the Fair Rent Act and the plaintiff has also been paying the reduced tax and hence estopped from challenging the same. The enhancement is legal and just and if the plaintiff is aggrieved, he has to prefer only revision before the appropriate authority and the Civil suit is not maintainable. The plaintiff's property bears two door numbers, one door No.77 Sonagar street and other door No.25 Pallivasal street, Cuddalore O.T.and accordingly, the property bearing door No.25 Pallivasal street, Cuddalore O.T. being used as godown was assessed separately as per law and accordingly, demand notice was issued, fixing the correct tax and the plaintiff is bound to pay the tax as demanded and hence, the plaintiff is not entitled to obtain the reliefs claimed in the suit.

6.In support of the plaintiff's case PWs 1 and 2 were examined, Exs.A1 to A6 were marked. On the side of defendant, DW1 was examined and no document has been marked.

7.On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to grant the reliefs in favour of the plaintiff as against the demand of tax made by the defendant, with reference to the property as bearing door No.25, Pallivasal street, however, dismissed the plaintiff's suit as regards the tax imposed by the defendant in connection with door No.77, Sonagar street and accordingly disposed of the suit. The first appellate Court also concurred with the judgment and decree of the trial Court. Aggrieved over the same, the present second appeal has been preferred.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

> (i)Whether in law the Courts below in failing to see that the respondents have not followed the mandatory requirements of Section 82 of the District Municipalities Act when levying Property Tax?
>
> (ii)Whether in law the Courts below are right in overlooking that the respondents had ignored the guidelines set out in 1994 (2) LW 715 D.R. While making assessment?

9.The defendant had issued two demand notices calling upon the plaintiff to pay the revised tax for the property of the plaintiff. As regards the demand made in respect of the plaintiff's property as also bearing door no.25, Pallivasal street, it is found that the Courts below had not accepted the defence version and accordingly, granted the reliefs prayed for in the plaint, with reference to the same. As against the determination of the Courts below, with reference to the said issue, the defendant has not preferred any appeal, so, the same had become final.

10. As regards the demand of reduced tax by the defendant in respect of the plaintiff's property bearing door No.77, Sonagar street, Cuddalore, it is found that, it is not in dispute that the said property was originally assessed at half yearly tax of Rs.1,308.20/-. Later, it has been enhanced to Rs.5349/- per half year with effect from 1.4.1991. However, on representation given by the plaintiff, the same had been reduced to Rs.3,328/- from the second half year of 1994. As regards the above facts, there is no dispute between the parties. It is thus found that the half yearly tax for the plaintiff's property has been determined at Rs.3,328/- from the second half year of 1994. According to the defendant, the tax so determined is just

and legal, following the procedure contemplated under the relevant Acts and the same had been determined on taking into account, the probable rental value that could be fetched from the property and also the actual market value of the property etc., and accordingly, it is stated that considering the various factors for fixing the determination of the tax, according to the defendant, taking into account the parameters governing the same, they have fixed the half yearly tax as Rs.3,328 from the half year of 1994. Inasmuch as the determination of the above said tax by the defendant was just and legal, it found that accordingly, without any demur or protest, the plaintiff has also been regularly paying the said tax from the second half year of 1994, till the laying of the suit in the year 1999. It is thus seen that inasmuch as the plaintiff was fully satisfied with the above said determination of the tax at Rs.3,328/- she had not questioned the same and paying the tax. Accordingly, in the light of the above position, as rightly found by the Courts below, it does not stand to reason as to how come the plaintiff had suddenly started disputing the same during the year 1999, when for a long period of time commencing from 1994 to 1999, he had been paying the said tax without raising any quarrel. Therefore, as rightly put forth by the defendant, the plaintiff is estopped as such from questioning the tax determined by the defendant, after acquiescing to the demand of tax made by the defendant from the year 1994 onwards.

11.It is found that, as per the material placed, the defendant has taken the consideration, the various factors namely, the market value of the building, the rental value that could be fetched from the building and other necessary criteria and accordingly, determined the half yearly tax as above sated. If according to the plaintiff, the above said determination is exorbitant or on the higher side and the same had been determined without following the procedures contemplated under the relevant Acts and if really, the plaintiff is aggrieved over the same, definitely the plaintiff as a prudent person would have sought for appropriate reliefs immediately as per law. However, it is found that the plaintiff had been paying the tax as determined by the defendant without any protest for more than five years and in such view of the the position, as rightly determined by the Courts below, it is too late for the plaintiff to question the above said determination of the tax by the defendant due to lapse of time. The plaintiff has sought for the relief of declaration that the determination of the tax by the defendant at Rs.3,328/- for door No.77, Sonagar, Cuddalore, O.T is wholly illegal, ultravires and also prayed for the consequential permanent injunction. In so far as the relief of declaration sought for by the plaintiff, it is found that, when the plaintiff has not questioned the same for more than five years and if really the plaintiff had been aggrieved over the determination of the said tax during 1994 itself and therefore, if at all the plaintiff had a cause of action to sue as against the same as per law, it is found that the cause of action for the plaintiff had accrued with reference to the same during the year 1994 itself. However, it is seen that the plaintiff had chosen to lay the present suit against the defendant for the reliefs of declaration and consequential permanent injunction only on 05.04.1990. As per Article 58 of the Limitation Act, 1963, the plaintiff for the obtainment of the declaration sought for in the present suit has to lay the suit within three years, when the right to sue first accrues to the plaintiff. Therefore, when the right to sue against the impugned demand notice had first accrued to the plaintiff during second half year of 1994 itself and when it is further found that the plaintiff had also acquiesced to the same and continued to pay the revised tax without any demur till the year 1999, the plaintiff's suit levied on 05.04.1990 is found to be clearly hit by Article 58 of the Limitation Act, 1963, and on the above said ground also, it is seen that the plaintiff's action is not legally maintainable.

12. Inasmuch as the determination of the tax by the defendant at Rs.3,328/- was done following the legal requirements and in accordance with the necessary guidelines set out in the various decisions of the courts, the plaintiff had also, accepting the same, paying the said tax, and accordingly, it is found that no material as such has been placed by the plaintiff to hold that the determination of the above said tax by the defendant is illegal or unjust. In such view of the matter, the suit laid by the plaintiff also being found to be barred by time and hit by the law of limitation as above determined, accordingly the substantial questions of law formulated in the second appeal are answered.

13. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition if any, is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sli

To

1. The Principal Subordinate Judge Cuddalore .

2. The Principal District Munsif
   Cuddalore.

copy to
The Section Officer
VR Section
High Court, Madras (+2 copies)

+1 cc to Mr.P.Srinivas Advocate sr 90292
+1 cc to M/s.Meenal Advocate sr 90349

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