

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Dated: 20.07.2017****Coram****WEB COPY****The HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA****S.A(MD)No.302 of 2017****and****C.M.P(MD)No.6464 of 2016**

1. The Government of Tamil Nadu,
Rep. By the District Collector,
Trichy.

2. The Excise Officer,
Kulithalai.

.. Appellants/Appellants/Defendants

Vs.

R.Sundaram

.. Respondent/Respondent/Plaintiff

Prayer:- Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 27.01.2017 made in A.S.No.8 of 2005 on the file of the Sub Court, Kuzhithalai, confirming the Judgment and Decree, dated 22.12.1986 made in O.S.No.3 of 1983 on the file of the Additional District Munsif Court, Kuzhithalai.

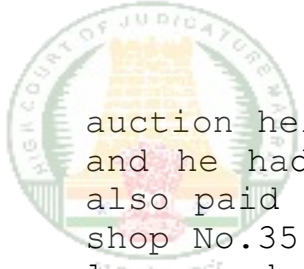
For Appellant : Mr.S.Sathish Kumar,
Additional Government Pleader.

JUDGMENT

The above second appeal arises against the Judgment and Decree, dated 27.01.2017 passed in A.S.No.8 of 2005, on the file of the Sub Court, Kuzhithalai, confirming the Judgment and Decree, dated 22.12.1986 passed in O.S.No.3 of 1983, on the file of the Additional District Munsif Court, Kuzhithalai.

2.The defendants, who are the revenue authorities, have filed the above appeal challenging the Judgment and Decree passed in O.S.No.3 of 1983, on the file of the Additional District Munsif Court, Kuzhithalai.

3.The plaintiff had taken on lease the right to vend Toddy in Toddy shop No.37 at Kavalkaranpatti, Kulithalai Taluk, in the



auction held on 11.06.1982. The plaintiff's bid was for Rs.4,950/- and he had also paid half of the kist amount. The plaintiff had also paid a sum of Rs.2,000/- by way of deposit. Insofar as Toddy shop No.35, which is in Puthur Village, is a neighbouring one, the lessee who took lease of shop No.35 had made arrangements and shifted his shop to the border of Kavalkaranpatti, which is against rule. The plaintiff also had complained the same to the authorities, but the authorities did not take any steps. As shop No.35 situates very close to the plaintiff's shop, he had incurred heavy loss and could not run the shop as expected, resulting in closure of the same.

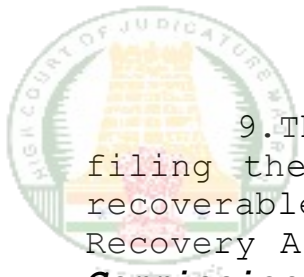
4. According to the plaintiff, before auction the defendants had not followed the various procedures contemplated under law. While so, the plaintiff received a notice from the second defendant on 02.11.1982, wherein, the second defendant had threatened to take action against the plaintiff for recovery of Rs.18,652.50 alleging loss to the defendants.

5. The case of the plaintiff is that even without ascertaining actual loss incurred, the defendants cannot take action under Revenue Recovery Act. Therefore, a suit has been filed for declaration that the proceedings taken by the defendants in their RC.P2.818/82, dated 03.11.1982 for collection of the money by invoking the provisions of the Revenue Recovery Act as illegal and for consequential relief of injunction.

6. The Courts below had concurrently held that the plaintiff was entitled for a decree. The defendants had marked Ex.B.1 which is legal notice, dated 03.07.1982 and Ex.B.2 which is sent by the Excise Officer, Kulithalai.

7. Even before the Appellate Court, these documents were not available for consideration, as they have been destroyed by the trial Court for the reason that the appeal was preferred belatedly.

8. There is no dispute that the plaintiff had taken shop No.37 in Kavalkaranpatti on lease and also paid Rs.4,950/- as monthly kist. He had also paid Rs.2,000/- as deposit and paid half a monthly cost of Rs.2,475/-. After he had taken the shop, the defendants had allowed another person to locate his shop No.35 very close to the shop allotted to the plaintiff and thereby caused loss to the plaintiff. For the aforesaid reasons, the plaintiff had closed his shop. While so, the defendants without any rhyme or reason sent a demand notice under Revenue Recovery Act. When the defendants had not quantified the sum recoverable from the plaintiff and the same was disputed, the action taken by the defendants for recovery is illegal.



9. The determination and adjudication had to be done before filing the suit by the authorities. Without determining the sum recoverable, the defendants are not entitled to invoke the Revenue Recovery Act. In this regard, reliance is placed on a decision in **Commissioner of Civil Supplies Vs. V. Sethuraman** reported in **1974 TLNJ 511** and the same reads as follows:-

"It is a well established proposition of construction that an authority which is entrusted with only powers of execution cannot assume for itself a jurisdiction to resolve anterior disputes by adjudication. Judicial power to decide civil disputes should not be confused with execution entrustment of recovery powers of a summary character as an expedient for quick recovery on grounds of state necessity. Section 52 being first an enabling summary recovery process, it cannot extend to and cover jurisdiction for finding a solution of a dispute, determining what is due after resolving the dispute and then applying the summary process of recovery under Section 52."

Merely because a contract provides for a liability for any deficiency in delivery, it does not follow that once the loss is found ipso facto the liability to compensate arises. This only means that the Government will have to institute suits, if they so think fit, to establish the liability and its quantum against each of the respondents."

10. In the light of the above decision, the defendants having not quantified the actual loss, if any, incurred due to the act of the plaintiff, cannot invoke Section 52 of the Revenue Recovery Act. Having failed to establish the loss incurred by the defendants either by adducing oral or documentary evidence, the first appeal has to fail, even the alleged closure of the shop No.37 was only due to the act of the defendants having allotted shop No.35 within the prohibited distance. Therefore, the Decree granted by the trial Court in favour of the plaintiff is correct and the appeal filed 10 years thereafter, which was dismissed and the Second Appeal arising out of the same does not deserve any merit and the same is also dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar



To

1. The Sub Judge,
Kuzhithalai.

2. The Additional District Munsif,
Kuzhithalai.

+1cc to The Spl.Government Pleader SR.No.66997

PS

VB/KP/SAR2/07/08/2017/4P/4C

S.A(MD) No.302 of 2017
20.07.2017