

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.06.2018
Pronounced on : 29.07.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

SECOND APPEAL No.277 of 2018
and
C.M.P.No.7117 of 2018

Arnattu Vellalar Madam
Represented by its President,
Subbiah Pillai,
36, Komaleeswaran Koil Street,
Chidambaram. Appellant/Plaintiff

vs.

Chidambaram Municipality,
Represented by its Commissioner,
Chidambaram. Respondent/Defendant

This Second appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.01.2010 passed in A.S.No.71 of 2007 on the file of the Subordinate Judge, Chidambaram partly allowing the Judgment and Decree dated 18.04.2007 passed in O.S.No.8 of 2003 on the file of the Principal District Munsif, Chidambaram.

For Appellant : Mr.A.L.Gandhimathi
For Respondent : No appearance

JUDGMENT

The present second appeal has been filed against the Judgment and Decree dated 29.01.2010 passed in A.S.No.71 of 2007 on the file of the Subordinate Judge, Chidambaram partly allowing the Judgment and Decree dated 18.04.2007 passed in O.S.No.8 of 2003 on the file of the Principal District Munsif, Chidambaram.

2.The brief facts which led to the filing of this second appeal, are as follows:

(i)The appellant herein is the plaintiff and the respondent herein is the defendant.

(ii)The plaintiff is an Arnattu Vellalar Community Trust, formed 800 years ago. The plaintiff is also running another Mutt at Thiruvanaikaval, by name, "Arnattu Vellalar Annathana Chatram". The said mutt is only a guest house to devotees and their community people, who visit "Sri Nataraja Temple" at Chidambaram. They have not collected any amount by way of rent or otherwise from the guests or visitors. But they have collected amount, by way of donation, from their community peoples and it is being taken as only income of the said Mutt. Later the building, which stands as Mutt, was demolished and a new building was constructed in the schedule mentioned property, after obtaining necessary permission from the defendant Municipality. In schedule mentioned property, there is one Hall in the ground floor, one Hall in the first floor and seven rooms in the second floor, with bath rooms and toilets. There is no permanent income for the Mutt. In such circumstances, the defendant issued a demand notice dated 06.01.2002 fixing the tax for the property at Rs.68,477/- by fixing annual rent at Rs.7,64,706/-. On receipt of the same, the plaintiff sent an objection to the defendant on 22.02.2002. Thereafter, the defendant revised the tax at Rs.27,401/- from 68,477/- for half years and the revised the annual rental value at Rs.3,82,553/- from Rs.7,64,706/-.

(iii)Thereafter, the plaintiff filed an appeal and the same is pending without passing any orders on it. Later, the Government issued G.O.Ms.No.64 Municipal Administration and Water Supply Department dated 24.04.1998 for a general revision of the property tax in respect of all buildings. Accordingly, the defendant levied the the property tax for the year 1998-99.

(iv)Hence, the plaintiff filed a suit in O.S.No.8 of 2003 against the respondent/defendant seeking to pass a decree declaring the enhanced assessment of property tax levied by Chidambaram Municipality in respect of the plaintiff's after General Revision of Taxes in the year 1998-99 assessed to fresh tax as arbitrary, illegal, null and void and to pass a decree for permanent injunction restraining the defendant Municipality, its officers, subordinates, staff and persons claiming under them from disconnecting drinking water supply connection and drainage connection or attached the movables of the plaintiff for non-payment of property tax and award the costs of the suit.

(v)The defendant resisted the suit by filing a written statement stating that the plaintiff is not a Trust and there is no connection with another Mutt at Thiruvanaikaval called "Arnattu Vellalar Annathana Chatram". Further, the plaintiff is neither a Mutt nor a guest house. Under the guise of Trust/Mutt, they are carrying on commercial activity by letting out the rooms on daily rent basis. Marriages are also conducted in the schedule mentioned property. Hence, the plaintiff has to pay the property tax. Hence, they prayed for the dismissal of the suit.

(vi) Under this background, the trial Court has taken up the matter for trial and framed the following issues:

1. தாவா இடத்திற்கு பிரதிவாதி நகராட்சியால் விதிக்கப்பட்ட வரியானது செல்லத்தக்கதல்ல, அது இல்லா நிலை உடையது. சட்டவிரோதமானது என்று வாதி கோரும் விளம்பல் பரிகாரம் வாதிக்கு கிடைக்கத் தக்கதா-

2. வாதி வழக்குரையில் பிரதிவாதிக்கு எதிராக கோரும் நிரந்தர உறுத்துக் கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத் தக்கதா-

3. உபய பார்ட்டிகளுக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன - ரு

(vii) In order to prove the case of the plaintiff, one Deenadyalan, Secretary of plaintiff's Mutt was examined as P.W.1 and eight documents were marked as Exs.A.1 to A.8. On the side of the defendant, one Santhanakrishnan was examined as D.W.1 and four documents were marked as Exs.B.1 to B.4.

(viii) The trial Court after hearing the arguments advanced by both the learned counsel and also considering the oral and documentary evidence, decreed the suit in favour of the plaintiff. Aggrieved by the said judgment and decree dated 18.04.2007 passed in O.S.No.8 of 2003 by the trial Court, the defendant filed an appeal in A.S.No.71 of 2007, by raising various grounds, in which, some of the relevant grounds are extracted hereunder:

"1. The decree and judgment of the lower Court is against law, weight of evidence and probabilities of the case and is not maintainable both on facts and in law.

2. The lower Court erred in assuming without any iota of proof, that the suit property is a mutt, overlooking that the nomenclature given has no relevance for arriving at decision with regard to the real state of affairs and usage.

3. The lower Court erred in overlooking the admission made in the oral evidence of P.W.1 as also in the documentary proof submitted by the plaintiff/respondent regarding the nature of the suit building subject to property.

4. The lower Court also grievously erred in overlooking Ex.B.4, which is an application submitted by the plaintiff relating to the suit building for purpose of assessment of property tax wherein it has been categorically and voluntarily admitted by the respondent themselves that the purpose and usage of the building is taken as Marriage Hall.

5. The lower Court erred in brushing aside the valuable admissions both oral and

written, by making a special pleading by the Court on behalf of the respondent that they will not make the usage of the building as commercial purpose.

6.The lower Court ought has gone wrong in decreeing the suit in favour of the plaintiff. "

(ix) The first appellate Court, based on the grounds raised in the appeal, framed the following points for consideration:

"(i)Whether the judgment and decree passed by the trial Court in O.S.No.8 of 2003 is liable to be dismissed?

(ii)What are the other reliefs the defendant is entitled to?"

(x)The first appellate Court is a fact finding Court and the learned Subordinate Judge has re-appreciated the entire oral and documentary evidence produced before the trial Court and set-aside the judgment and decree passed by the trial Court and allowed the appeal.

(xi)Feeling aggrieved by the judgment and decree dated 29.01.2010 passed in A.S.No.71 of 2007 by the learned Subordinate Judge, the present second appeal has been preferred by the appellant by raising the following substantial questions of law:

"1.Whether the lower appellate Court has committed an error in holding that the suit property is not a "Chatiram", but is "Kalyana Mandapam" merely because donation was being received from persons who had used the said building?

2.Whether the character of the building as a "Chatiram" would stand changed to that of a commercial "Kalyana Mandapam" by receipt of donations from persons using the building?

3.Whether the assessment of Property Tax by the respondent herein is against the mandatory provisions contained under Sec.82 of the District Municipalities Act and hence, is unsustainable in law?

4.Whether the lower Appellate Court is right in not following the judgment of this Hon'ble Court reported in 2008 (2) Law Weekly, page 374?

5.Whether the lower Appellate Court is right in allowing the First Appeal filed by the respondent merely because of the fact that the appellant has not sought for

declaration that the Property Tax assessment is void and consequently prayed for re-assessment of the same?

3. Heard the learned counsel for the appellant and perused the materials available on record.

4. Though notice has been served and the name of the respondent is also printed in the cause list, there is no representation on behalf of him either in person or through counsel.

5. The learned counsel for the appellant submitted that the suit property is a Chattiram and it is not used for commercial purpose at all. Therefore, the assessment order passed by the respondent is void and consequentially prayed for a direction to the respondent to reassess the property tax assigned on 06.01.2002.

6. The learned counsel for the appellant further submitted that the appellant already established their case before the trial Court and the subject matter of the suit property is only Chattiram. The trial Court has also properly considered the facts and circumstances of the case, after perusing the documents available on record and considering the submissions made by the learned counsel on either rightly decreed the suit in favour of the plaintiff/appellant. But, the first appellate Court, without considering the fact that the suit property is only Chathiram and collecting donation only to maintain the building, has erroneously allowed the appeal in part.

7. It is well settled proposition of law that once the property is described as Chattiram or Mutt and it is being used only by the community peoples of the appellant, by collecting donation from them and as there is no income for the Mutt and it is not used for commercial purpose, the respondent is not entitled to collect the property tax from the appellant.

8. In view of the said reasoning, the judgment and decree dated 29.01.2010 passed in A.S.No.71 of 2007 is liable to be set aside.

9. Further, on a perusal of records, it is seen that when the matter was taken up for hearing, no substantial question law was framed by this Court, on an earlier occasion. Hence, the following substantial questions of law are framed by this Court:

"(i) Whether the suit property is used for commercial purpose by collecting rent?

(ii) Whether the assessment order passed

by the respondent is valid or not?"

10.It is not in dispute that the suit property namely, Chattiram or Mutt was originally belonged to the appellant. In the year 2001, the erstwhile building of the Mutt was demolished and a new building was constructed, by obtaining necessary permission from the respondent Municipality.

11.However, a perusal of the judgment of the appellate court would reveal that after constructing the new building, the appellant is carrying on commercial activities by letting it out as Kalyana Mandapam for huge rents. The new building was constructed with tiled flooring, two huge halls in the ground floor and first floor. Besides 12 separate rooms, there are rooms for stay, with bathroom and toilet facilities. The physical features of the suit property are like Kalyanamandapam, wherein marriages and meetings are being conducted regularly, besides also using the same for commercial purposes, by letting the rooms for tourists and the students of Annamalai University and rents are also collected from them.

12.The above reasonings of the appellate court cannot be brushed aside. Since the first appellate Court is a final fact finding authority/Court, it appreciated the oral and documentary evidence recorded by the trial Court and partly set-aside the judgment and decree.

13.The contention of the appellant is that the suit property is not used for conducting marriage functions and any other commercial activities; hence, the assessment order passed by the respondent has to be set aside.

14.It is seen that at the time of cross-examination of P.W.1, Deenadayalan, the secretary of the Mutt has stated that there was no head for the Mutt and he has admitted the following facts:

"(i)The building has been constructed in the year 2001 by spending a sum of Rs.20,00,000/- by obtaining necessary permissions and there is a big hall and seven rooms in the first floor, wherein two rooms are used as store rooms.

(ii)The Registers are used for collection of donations and the details of persons staying in the suit building.

(iii)Further 60th marriages and normal marriages have been performed in the suit building.

(iv) A sum of Rs.1,66,750/- has been collected as donations for conducting marriages."

15. However, contrary to the same, in the judgment of the appellate court, it is seen that P.W.1 in his chief examination has stated that no marriages have been conducted in the suit building. But, on contrary, he has admitted the fact that a sum of Rs.1,66,750/- has been collected as donations for conducting marriages. It seems that marriages have been conducted in the suit building. To prove the same, Ex.D.2, Marriage invitation card was produced and marked before the trial Court on the side of the respondent Municipality. But, the appellant has not produced any register before the trial Court. In Ex.B.4, it is mentioned that the suit building is a Thirumana Mandapam. If the suit building is used for some other purposes other than for what it is proposed, it cannot be said as Thirumana Mandapam.

16. Moreover, the appellant has claimed for declaration of the enhanced assessment of property tax levied by the Chidambaram Municipality as null and void and they have not sought for any relief.

17. As per the decision of the Hon'ble Supreme Court in Srikant Kashinath Jituri and others vs. Corporation of the City of Belgaum (AIR 1995 SCC 288), wherein the Hon'ble Supreme Court held that property tax is the main source of revenue to the Municipal Corporations and the insistence upon levy of property on the basis of fair rent alone disregarding the actual rent received is neither justified nor practicable.

18. From the above, it is seen that the suit property is not only used for community rituals, but also used for commercial purposes by conducting marriages, meetings etc., and letting the rooms to tourists and students and collected the rents from them. Moreover, P.W.1, the Secretary of the appellant Mutt him admitted in cross examination that marriages have been performed and a sum of Rs.1,66,750/- has been collected as donations for conducting marriages. Admittedly, the suit building is let out for conducting marriage function, conducting meeting and let out to tourists and college students were collecting rent in the name of donation will not change the character of income. From the above discussion it is clearly proved that the suit building is being utilized for commercial purpose. Hence, there is no error committed by the respondent in passing the order, revising the property tax of the appellant / plaintiff.

19. In view of the above, this Court is of the opinion that there is no perversity in the judgment and decree passed by the appellate court. Therefore, there is no merits in the second appeal. Hence, the substantial questions of law framed are

answered against the appellant and in favour of the respondent.

20.In the result, the second appeal is dismissed. The judgment and decree dated 29.01.2010 passed in A.S.No.71 of 2007 by the learned Subordinate Judge, Chidambaram, is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

cla

To

1.The Subordinate Judge,
Chidambaram.

2.The Principal District Munsif,
Chidambaram.

3.The Record Keeper,
V.R. Section,
High Court, Madras.(2 copies)

+1 CC to Mrs.A.L. Gandhimathi, Advocate sr 42367.

S.A.No.277 of 2018
and C.M.P.No.7117 of 2018

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