

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

S.A.No.1248 of 2005

Ariyankuppam Commune Panchayat
rep.by its Commissioner.

..Appellant/Defendant

Vs.

D.Maheswari

..Respondent/Plaintiff

Prayer:-

Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 21.12.2004 in A.S.No.43 of 2004 on the file of Principal District Judge, Pondicherry reversing aside the decree and judgment dated 08.07.2004 on the file of II Addl.District Munsif at Pondicherry made in O.S.No.175 of 2003.

For Appellant : Mr.D.Ravichander, AGP
(Pondicherry)

For Respondent : Mr.V.Raghavachari

JUDGMENT

The present Second Appeal filed against the judgment and decree passed in A.S.No.43 of 2004, reversing the judgment and decree passed by the learned II Additional District Munsif, Pondicherry in O.S.No.175 of 2003.

2.The parties are referred as per the ranking in the Trial Court.

3.The suit was filed for declaration to declare that the demand notice dated 13.12.2002 under tax assessment No.6652 issued by the defendant regarding the suit schedule mentioned property is null and void. The plaintiff contends that she is the absolute owner of the residential house mentioned in the suit schedule. The plaintiff obtained permission from the Pondicherry Planning authority and constructed a building during the year 1996. The plaintiff completed the construction of the house only during the month of January 1996 and occupied the

said house during the third week of January 1996. The plaintiff leased out the entire house for a monthly rent of Rs.600/- (Rupees Six Hundred only), ground floor of the house for Rs.300/- (Rupees Three Hundred only) and First Floor of the house for Rs.300/- (Rupees Three Hundred only).

4.The fact regarding the lease was known to the defendant at the time of conducting the enquiry. The defendant issued a demand notice dated 13.12.2002 under tax assessment No.6652 and the same was served to the plaintiff on 16.12.2002. The property tax amount of Rs.13,154/- (Rupees Thirteen Thousand, One Hundred and Four only) was demanded by the defendants.

5.The grievance of the plaintiff was that the defendant issued the demand notice arbitrarily and without following the rule of law and the guidelines issued in respect of the assessment of the property tax. Thus, the demand notice is void of being issued.

6.It is further contended that the defendant had not followed the provisions of Pondicherry Village and Commune Panchayat Act, while issuing the demand notice. Further, the demand notice was vague and not containing any particulars and details in respect of the assessment of property tax. The defendant has made the assessment for seven years in a stretch, which cannot be in force in the eye of law. The plaintiff occupied the house only during January 1996 and the defendant assessed the property tax for the house belonged to the plaintiff from the year 1995. Such an assessment was erroneous. The plaintiff was filed on these grounds with a relief to declare that the demand notice issued by the defendant is null and void.

7.The defendants in the suit filed a written statement, holding that the institution of the suit under Order 7 Rule 1 of the Code of Civil Procedure is not maintainable. There is an express bar under Section 9 of the Code of Civil Procedure and the bar is provided under the provisions of the Commune Panchayat Act and as per the G.O./Order No. 4/AD(CS)/LAD/2000 dated 28.08.2000. The said Government Order was marked as Ex.B7 before the Trial Court. The written statements also states that in view of the express bar under the provisions of the Special Act namely, the Commune Panchayat Act, the suit is not maintainable under Section 9 of the Code of Civil Procedure. Further ground was raised before the Trial Court that alternate remedies available for the plaintiff under the provisions of the very Act and accordingly, the plaintiff has to approach the competent appellate authorities for the redressal of their grievances. Thus, the suit is liable to be dismissed in limini is not maintainable.

8.The Trial Court formulated the issues in relation to the point of jurisdiction, cause of action and the issuance of demand notice by the defendant.

9.The Trial Court considered the documents marked and the depositions of the witnesses and arrived a finding that the Civil Court has no jurisdiction to try suit as it does not fall under the category of violation of principles of natural justice and the plaintiff has not established any cause of action for the purpose of maintaining the suit.

10.In view of the fact that the Civil Court has no jurisdiction to entertain the Civil Suit on account of an express bar, under Section 9 of the Code of Civil Procedure, the suit filed by the plaintiff was dismissed.

11.Challenging the judgment and decree passed by the Trial Court, the plaintiff filed A.S.No.43 of 2004. The First Appellate Court reversed the judgment of the Trial Court on the ground that the standard rent or fair rent has to be used for assessing the tax for the building. The fair rent or standard rent has to be followed irrespective of the fact that the fair rent has been fixed in respect of the building or land. Even, if the fair rent has not been determined for the building, the authorities should have to arrive at their own figure of rent and it can be done without any difficulty, keeping in view the principles laid down in Section 8 of the Rent Control Act. The Pondicherry Village and Commune Panchayats Act makes provision for fixation of the annual value according to the rent at which, the building is expected to be let out from month to month or from year to year, less specified deduction. The respondent-authorities have not followed the Rent Control Act to determine the fair rent or standard rent for the building for the purpose of assessment of house-tax. Therefore, the assessment of house-tax on the basis of the rent payable by the tenant is not proper and annual value of the building is to be assessed following the provisions of the Rent Control Act. Therefore, the demand notice issued by the tenant under Ex.P3 to P5, following Ex.B2-special notice, is liable to be set aside and the authorities are bound to assess the tax for the property, keeping in view the principles laid down under the Pondicherry Village and Commune Panchayats Act.

12.The First Appellate Court gone into the merits of the matter without considering the preliminary issue of the maintainability of the suit with reference to the provisions of the Pondicherry Village and Commune Panchayat Act. When there is a provision to exhaust the alternate remedy under the Special Act and when there is an express bar as contemplated, then the suit is expressly barred under Section 9 of the Code of Civil

Procedure. Contrarily, the First Appellate Court had gone into the merits of the matter in respect of the assessment made by the competent authorities under the Commune Panchayat Act and held that the manner, in which, the property tax was assessed by the competent authorities were improper and not in accordance with the Commune Panchayat Act. Such findings are certainly unnecessary as far as the First Appellate Court is concerned in view of the express bar as contemplated.

13. The learned counsel for the plaintiff contended that the plaintiff has questioned the manner, in which the assessment made by the competent authorities namely, the defendant. Thus, the suit itself is maintainable. Further, the plaintiff has established that the house tax was imposed with retrospective effect and such imposition is impermissible in law.

14. Disputing the contentions, the learned counsel for the defendant states that when the suit itself is not maintainable on account of the express bar, the question of adjudicating the merits does not arise at all. Further, Under Section 34 of the Specific Relief Act, a suit for mere declaration is not maintainable and in this regard, cited the judgment in the case of NDMC v. Satish Chand, reported in 2003 10 SCC 38 and the relevant paragraphs 6 and 9 are extracted hereunder:

"6. It will be noticed from the provisions contained in Section 9 of the Code of Civil Procedure that a bar to file a civil suit may be express or implied. An express bar is where a statute itself contains a provision that the jurisdiction of a civil court is barred e.g. the bar contained in Section 293 of the Income Tax Act, 1961. An implied bar may arise when a statute provides a special remedy to an aggrieved party like a right of appeal as contained in the Punjab Municipal Act which is the subject-matter of the present case. Section 86 of the Act restrains a party from challenging assessment and levy of tax in any manner other than as provided under the Act. A provision like this is the implied bar envisaged in Section 9 CPC against filing a civil suit. In Raja Ram Kumar Bhargava v. Union of India [(1988) 1 SCC 681 : 1988 SCC (Tax) 132 : AIR 1988 SC 752] this Court observed: (SCC p. 689, para 19)

"Generally speaking, the broad guiding considerations are that wherever a right, not pre-existing in common law, is created by a statute and that statute itself provided a machinery for the enforcement of the right, both the right and the remedy having been created uno flatu and a finality is intended to the result of the statutory proceedings, then, even in the absence of an exclusionary

provision the civil court's jurisdiction is impliedly barred. If, however, a right pre-existing in common law is recognised by the statute and a new statutory remedy for its enforcement provided, without expressly excluding the civil court's jurisdiction, then both the common law and the statutory remedies might become concurrent remedies leaving open an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the civil court's jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai case [AIR 1969 SC 78] ."

9. In view of the aforesaid position in law, we are of the considered view that the civil suit filed by the respondent challenging the assessment and demand of property tax by the appellant was clearly barred. The judgments of the lower appellate court and the High Court are, therefore, set aside and the judgment of the trial court is hereby restored. The civil suit filed by the respondent is dismissed as not maintainable. The appeal is allowed. There will be no order as to costs."

15. The defendant filed the present Second Appeal mainly on the ground that the suit is barred expressly and further, a mere suit for declaration is not maintainable with reference to Section 34 of the Specific Relief Act. Though the Trial Court dismissed the suit, the First Appellate Court erroneously reversed the judgment and decree passed by the Trial Court by adjudicating the merits in respect of the assessment of property tax by the competent authorities of the defendant Panchayat.

16. This being the factum of the case, this Court is of an opinion that when the suit itself is not maintainable on account of an express bar and with reference to Section 34 of the Specific Relief Act, the First Appellate Court ought not have gone into the merits of the matter in relation to the house tax assessment made by the competent authorities of the defendant and arrived a conclusion that the demand notice issued by the defendant is null and void. Such a finding is certainly uncalled for and not in consonance with the established principles of law and accordingly, the decree and judgment issued by the First Appellate Court is perverse and infirm.

17. Thus, the judgment and decree dated 21.12.2004 passed in A.S.No.43 of 2004 on the file of the Principal District Judge, Pondicherry, is set aside and the judgment and decree dated 08.07.2004 in O.S.No.175 of 2003 on the file of the II Additional District Munsif at Pondicherry stands confirmed. However, it is made clear that the respondents in the present

Second Appeal is at liberty to approach the competent authorities for the purpose of redressing their grievances in the manner known to law.

18. Accordingly, the Second Appeal stands allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Judge, Pondicherry.
- 2.The II Additional District Munsif, Pondicherry.

Copy To:-

The Section Officer
VR Section, High Court
Madras. (2 Copies)

- +1cc to Mr.V.Raghavachari, Advocate, S.R.No.78558
+1cc to the Government Pleader(Pondy), S.R.No.78495

S.A.No.1248 of 2005

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