

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2018

PRONOUNCED ON : 01.03.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1696 of 2003

RamadossAppellant/Appellant/Plaintiff

Vs.

- 1.Govt.of Tamil Nadu
rep.by District Collector,
Nagapattinam District,
having office at Beach Road,
Nagapattinam.
2. Divisional Excise Officer,
Tahsildar's Office,
Pattamangala Street,
Mayiladuthurai,
Nagapattinam District.... Respondents/Respondents/Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.03.2002 passed in A.S.No.56 of 2001 on the file of the Additional Sub Court, Mayiladuthurai, confirming the Judgment and Decree dated 19.04.2000 passed in O.S.No.423 of 1997 on the file of the Principal District Munsif Court, Mayiladuthurai.

For Appellant : Mr.S.Sounthar

For Respondent : Mrs.A.Madhumathi
Nos.1 & 2 Spl.Additional Govt. Pleader (CS)

JUDGMENT

This second appeal is directed against the Judgement and Decree dated 28.03.2002 passed in A.S.No.56 of 2001 on the file of the Additional Sub Court, Mayiladuthurai, confirming the Judgment and Decree dated 19.04.2000 passed in O.S.No.423 of 1997 on the file of the Principal District Munsif Court, Mayiladuthurai.

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 belonged to the plaintiff and it is a residential house, in which, the plaintiff and his family members are residing. The plaintiff had participated in the Toddyshop auction conducted by the Government of Tamil Nadu in the year 1983 - 1984 and became the highest bidder for T.S.No.62 and paid half of the kist amount of Rs.2,000/- to the Government for the above said shop. However, the bid was not confirmed in favour of the plaintiff and on the other hand, one Kaliyaperumal of Pondur brought the shop for resale and as if the bid amount was very low, the Government conducted fresh auction and the plaintiff has not participated in the re-auction and no licence had been issued in favour of the plaintiff and the plaintiff has not run the shop and thus, the plaintiff is not concerned with the taddy shop. While so, all of a sudden, on 19.09.1997, the second defendant, through the Village Administrative Officer of the Village, threatened as if the suit property would be brought for auction in public for the amount due to the Government by the plaintiff. However, as the plaintiff's, participation in the toddy shop auction, was not confirmed in his favour and no licence had been issued to him and no prior notice was also issued regarding the sale of the suit property as such, the second defendant, in violation of the principles of natural justice, has initiated auction against the suit property illegally and hence, the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit is not maintainable either in law or on facts and the plaintiff was the auction purchaser of the toddy shop No.62 at Pandur Village for the excise year 1983-84 and the sale was confirmed in his favour in Collector's proceedings T.S.No.62 /83- 84, Ex2, dated 27.06.1993 and the same was served on the plaintiff on 05.07.1983 and as per the conditions, the plaintiff has to remit 2 ½ months kist within the stipulated period and the defendants were constrained to conduct a reauction of the shop and one Kunchu was the auction purchaser and his offer was Rs.1,230/- and the Government, thereby, incurred a loss and the notional loss was fixed at Rs.10,544/- and accordingly, as per the conditions of the auction and other stipulations, the plaintiff is liable to pay the notional loss to the Government and the plaintiff has given his consent to the above said conditions at the time of participating in the auction and the defendants efforts to collect the amount from the plaintiff ended in vain and the plaintiff evaded to pay the amount, the defendants

issued a show cause notice, which was not responded by the plaintiff and accordingly, proceedings were initiated under the Provisions of the Revenue Recovery Act for the collection of loss sustained by the Government and the plaintiff has offered the suit property as security at the time of the auction and accordingly, the same was brought to auction by the defendants and in view of the Provisions of Section 56 (A) of the Tamil Nadu Prohibition Act, the civil Court has no jurisdiction to entertain the suit. The plaintiff has not issued the statutory notice and on that score also, the suit has to fail and hence, the defendants are perfectly in order in bringing the suit property for sale and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 has been examined and Ex.A1 was marked. On the side of the defendants, DW1 has been examined and no documentary evidence has been marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit and 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:

" (a) Whether the findings of the Courts below that appellant herein admitted in his evidence that auction sale confirmation order was served on him is vitiated by misreading of evidence and perversity, when there is no such clear admission by the appellant?

(b) Whether the Courts below erred in not drawing adverse inference against respondents for their failure to produce any document to support their case that auction confirmation order was served on the appellant? Whether the respondents are guilty of withholding best available evidence?"

9. As per the admitted case of the plaintiff, it is found that he has taken part in the auction of toddy shop No.62 during 1983-84. However, according to the plaintiff, the sale of the said toddy shop was not confirmed in his favour and the said toddy shop was again re-auctioned and he had not taken part in the re-auction of the toddy shop and inasmuch as the plaintiff was not granted any licence in respect of the said toddy shop, according to the plaintiff, he has no connection whatsoever with the said toddy shop thereafter. While so, all of a sudden, the defendants initiated auction under the Provisions of Revenue Recovery Act against the suit property belonging to the plaintiff as if the same had been done for the recovery of the loss sustained by the Government in the auction of the toddy shop No.62 and hence, according to the plaintiff, he has been necessitated to lay the suit against the defendants for appropriate reliefs.

10. It is the specific case of the defendants that in the auction held during 1983-84, the plaintiff was the bidder and the sale of the said toddy shop was confirmed in favour of the plaintiff as per the proceedings of the Collector's and however, as the plaintiff failed to proceed further in the matter, according to the defendants, the said toddy shop was again re-auctioned and thereby, as the defendants sustained loss, the notional loss quantified at Rs.10,544/- and as the plaintiff had agreed to abide by the conditions of the auction during the bidding, it is contended by the defendants, accordingly, for the recovery of notional loss sustained by the defendants, the property offered by the plaintiff as a security, i.e. the suit property, was proceeded against under the Provisions of Revenue Recovery Act and hence, the plaintiff is not entitled to seek and obtain the reliefs sought for in the suit and further, according to the defendants the suit laid by the plaintiff is not maintainable in the civil forum and thereby, the suit is liable to be dismissed.

11. Materials placed in the matter both by way of oral and documentary evidence would go to show that as rightly determined by the Courts below, the plaintiff examined as PW1 has clearly admitted during the course of cross examination that the auction in respect of the toddy shop No.62 was confirmed in his favour and that, he had received necessary orders from the Government in connection with the same. However, it is the case of the plaintiff that he could not proceed further in the running of the auction shop as the space was not sufficient for the said purpose and it is thus found that as rightly determined by the Courts below, from the above said admission of the plaintiff, the auction of the toddy shop No.62 during 1983 - 84 is found to have been confirmed in favour of the plaintiff and therefore, the case of the plaintiff in the plaint that the auction was not

confirmed in his favour in respect of the above said shop during 1983-84 cannot be believed and accepted. In such view of the matter, as rightly contended by the defendants, as the auction had been confirmed in favour of the plaintiff, it is for the plaintiff to proceed further in the running of the toddy shop taken by him in the auction sale. However, inasmuch as the plaintiff did not proceed further in the running of the toddy shop pursuant to the auction confirmed in his favour, the defendants had been necessitated to re-auction the shop and accordingly, it is found that as the re-auction fetched only a marginal amount, the defendants thereby sustained a notional loss quantified at Rs.10,544/-, it is found that the defendants have resorted action against the plaintiff under the Revenue Recovery Act and as the plaintiff had offered the suit property as the security at the time of bidding in the auction thereby accepting the conditions of the auction, it is found that the defendants have accordingly proceeded against the suit property. It is thus found that the Courts below have rightly determined that the defendants are entitled to proceed against the suit property for the loss sustained by them on account of the failure of the plaintiff to proceed further in the running of the toddy shop despite the auction being confirmed in his favour as admitted by him during the course of cross examination.

12. It is also contended by the plaintiff that no notice has been given to him before initiating auction against the suit property under the Revenue Recovery Act and therefore, the above said auction initiated by the defendants is opposed to the principles of natural justice and hence, on that score, the same is liable to be set aside. However, the plaintiff examined as PW1, during the course of further cross examination has clearly admitted that he had received several communications from the Government and also in person about the proposed auction to be initiated by the Government against the suit property and in such view of the matter, the case of the plaintiff that he had not been put on notice by the Government before initiating the process of auction against the suit property falls to the ground and therefore, it is found that the Government has not violated the principles of natural justice in the initiation of action against the plaintiff, i.e. against the suit property and therefore, when it is found that the plaintiff had agreed to the auction conditions at the time of bidding in the auction and also offered the suit property as the security with reference to the same, it is found that the defendants are wholly entitled to proceed against the suit property for the recovery of the loss sustained by them as per law.

13. The further contention put forth by the plaintiff that he and his family members are residing in the suit property and therefore, the same should not be proceeded against with also falls to the ground, when it is found that even as per the testimony of the plaintiff, he is not residing in the suit property and residing elsewhere and that, he had already sold the suit property to others and the purchaser is in the possession of the suit property, such being the position, it is found that the case of the plaintiff that inasmuch as he and his family members are residing in the suit property, the defendants are precluded from the proceeding against the plaintiff as such cannot be accepted in any manner.

14. Accordingly, it is found that the Courts below have rightly found that the plaintiff has come forward with the case on false allegations and accordingly, unable to sustain the same, was forced to admit that on account of his failure to run the toddy shop, despite being the highest bidder and the same also being confirmed in his favour, it is found that the Government thereby sustaining loss, the Government is justified as per law to proceed against the suit property for the recovery of the loss and in such view of the matter, the Courts below are found to have rightly determined the case on merits without giving room for any complaint and hence, the judgement and decree of the Courts below, rejecting the plaintiff's case, do not warrant any interference.

15. In the light of the above discussions, considering the materials placed on record through the admission of the plaintiff himself, it is found that the Courts below were fully justified in holding that the auction sale of toddy shop No.62 had been confirmed in favour of the plaintiff by the Government and in such view of the matter, there is no need on the part of the defendants to place any document in support of their case as regards the confirmation of the auction sale in favour of the plaintiff and therefore, there is no necessity for the Courts below to draw any adverse inference against the defendants and accordingly, it is found that the determination of the Courts below that the plaintiff is not entitled to obtain the reliefs sought for is found to be on the basis of the proper appreciation of the materials placed on record and does not suffer from any perversity, illegality as put forth by the plaintiff. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

16. During the course of arguments, the Additional Government Pleader represented that the civil suit laid by the plaintiff is barred as per the Provisions of the Tamil Nadu Prohibition Act and in this connection, placed reliance upon the decision reported in (2006) 1 MLJ 310 (K.Pichai Pillai Vs.The Government of Tamil Nadu...). It is found that the Courts below had opined that the suit laid by the plaintiff is maintainable and not barred by the Provisions of the Section 56 (A) & (B) of the Tamil Nadu Prohibition Act. However, as now put forth by the Additional Government Pleader, on a perusal of Section 56 (A) & (B) of the said Act, it is found that the Civil Court jurisdiction has been specifically barred under the above said provisions and in such view of the matter, considering the facts and circumstances, when the defendants are proceeding against the suit property only pursuant to the Provisions of the Tamil Nadu Prohibition Act for the loss sustained by them and accordingly, action initiated against the suit property under the Provisions of Revenue Recovery Act, as rightly argued by the Additional Government Pleader, in the light of the above said authority, squarely applying to the facts and circumstances of the present case, it is found that the civil action laid by the plaintiff is not maintainable as such and therefore, it is seen that the determination of the Courts below that the suit laid by the plaintiff is maintainable is found to be not legally sustainable as such, when the jurisdiction of the civil Court has been expressly ousted as per the terms of the above said provisions of the Tamil Nadu Prohibition Act. It is thus found that apart from the absence of the merits in the plaintiff's case as above discussed, it is further noted that the suit laid by the plaintiff in the civil forum is not maintainable in the light of the Provisions of Section 56 (A) & (B) and the said view is also fortified by the above said authority relied upon by the Additional Government Pleader. For the reasons aforestated also, it is found that the plaintiff is not entitled to be granted the reliefs sought for by way of the civil action laid by him. The Additional Government Pleader also relied upon the decision of this Court dated 22.03.2017 passed in A.S.No.86/2006 for the proposition that when a particular Act prohibits the jurisdiction of the civil Court from initiating action taken pursuant to the Provisions of such Act, the civil Court would be barred from entertaining the suit on the said matter and it is thus found that when a the civil Court's jurisdiction has been specifically barred under the Provisions of the Tamil Nadu Prohibition Act as above discussed, the above said authority relied upon by the Additional Government Pleader also lends support to his contention that the civil Court should not have entertained the plaintiff's suit, when the jurisdiction of the civil Court has been specifically barred as per the above said provisions of the Tamil Nadu Prohibition Act.

At the end, the second appeal fails and accordingly, is dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CS-ii)

//True Copy//

Sub Assistant Registrar

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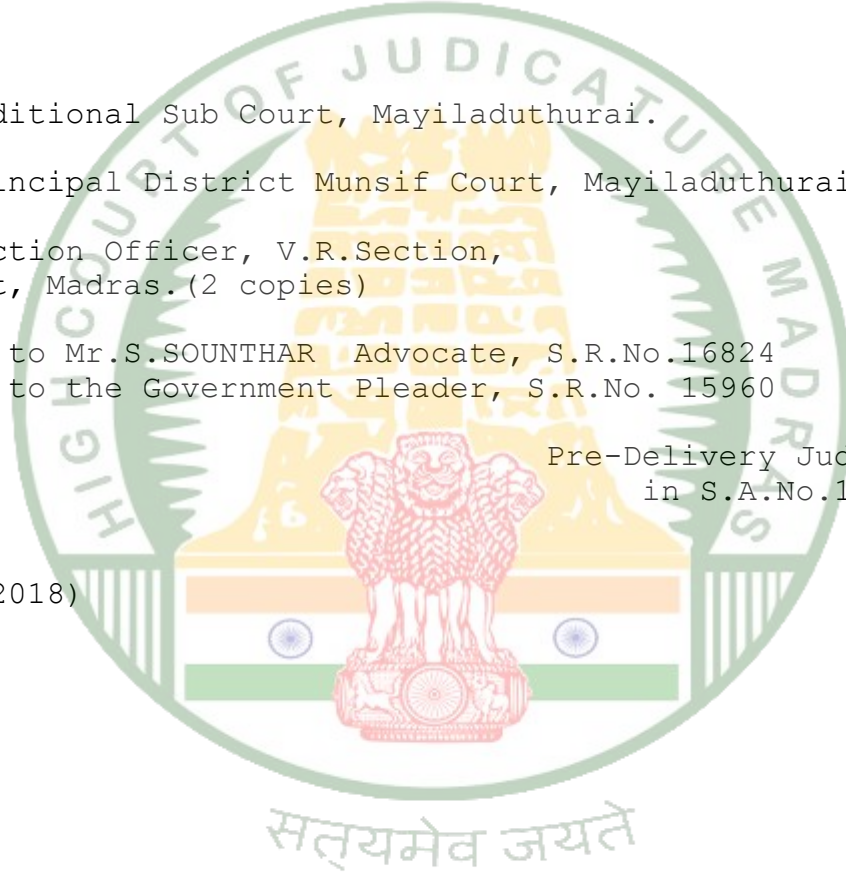
To

1. The Additional Sub Court, Mayiladuthurai.
2. The Principal District Munsif Court, Mayiladuthurai.
3. The Section Officer, V.R.Section,
High Court, Madras.(2 copies)

+1cc to Mr.S.SOUNTHAR Advocate, S.R.No.16824
+1cc to the Government Pleader, S.R.No. 15960

Pre-Delivery Judgment made
in S.A.No.1696 of 2003

AK(CO)
TR(16/04/2018)



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