IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.879 of 2016

Sunil Kumar Bhanot

....Appellant

Versus

Municipal Council Morinda

....Respondent

Date of Order: 27.3.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vineet Chaudhary, Advocate for the appellant.

AMIT RAWAL, J (ORAL)

Appellant-plaintiff is aggrieved of the judgment and decree dated 27.8.2015 passed by learned Addl. District Judge, Rupnagar whereby the appeal filed by the respondent-Municipal Council Morinda against the judgment and decree dated 29.1.2015 passed by learned Civil Judge (Jr. Division), Rupnagar, decreeing the suit of the plaintiff, has been accepted.

Plaintiff-appellant instituted the suit for permanent injunction restraining the defendant from recovering/realizing or collecting the amount of Rs.28,414/- as the house tax on the basis of notice bearing No.266 MCM 1178/1510.2009 dated 09.09.2009 and bill bearing No.73/1 dated 18.5.2009 for the year 1998-1999 to 2009-2010 in respect of property bearing No.2/190 (Vacant plot) situated at Morinda, Tehsil and District Ropar from the plaintiff being null and void ab initio and arbitrary. It was pleaded that the entire assessment based on notice 266 MCM 1178 under the provisions of the Punjab Municipal Act, 1911 (for short "1911 Act") was illegal, null and void as no notice was served to the plaintiff before imposition of tax and also no criteria was conveyed to the plaintiff in this respect.

The suit was contested by the defendant-respondent by raising preliminary objection on the ground of maintainability and want of service of notice U/s 49 of the Act.

The trial Court on the basis of preponderance of evidence decreed the suit holding that the plaintiff was not given any notice U/s 65 of the Act for calling his option with regard to assessment of house tax. As the defendants had not brought on record any document to support their contentions, the trial Court held the suit to be maintainable and restrained the defendants from recovery of house tax. However, liberty was granted to the defendants to re-assess the house tax of the property of the plaintiff as per the law.

Feeling dissatisfied, the defendant-Municipal Council, Morinda filed the appeal and the lower Appellate Court while accepting the same reversed the findings holding that the plaintiff had filed a simpliciter suit for permanent injunction, which was not maintainable. Unless the aforesaid notice and bill were not assailed at, the plaintiff was not entitled to the relief of permanent injunction.

Learned counsel for the appellant submitted that the lower Appellate Court has misconstrued the facts on record. No proper procedure as per the provisions of 1911 Act while assessing the house tax of the suit property was followed. He submitted that it is well settled that whenever such kind of procedure is not adhered, a person has a remedy to invoke the jurisdiction of Civil Court under Section 9 CPC. It has rightly been observed by the learned trial Court that as per Section 68 of 1911 Act, the assessment on the basis of annual value is done for every five years and there cannot be more than 10% increase in the rate of assessment. These facts have not been noticed by the learned Lower Appellate Court.

After hearing learned counsel for the appellant and appraising the paper book minutely, I find no merit in the contentions raised by learned counsel for the appellant. The assessment proceedings are amenable to in appeal as per the 1911 Act. Moreover, no declaration was sought for challenging the notice or the demand raised by the Municipal Council except for seeking permanent injunction, which was not proper remedy. The lower Appellate Court, in my view, has rightly held that where the grievance of the party relates to an assessment or principles of assessment under the Municipal Act, the jurisdiction of the civil court was barred under Section 84 and 86 of the Municipal Act.

In view of aforesaid discussion, no case for interference is made out.

Dismissed However, the appellant shall be at liberty to avail alternative remedy, if permissible in accordance with law.

March 27, 2018 **`(AMIT RAWAL)**
manoj **JUDGE**

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No