IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 06.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

S.A.No.182 of 2004

1. S.Lakshmi (Died)
2. S.Baladhandayutham
3. S.Pachayappan
4. S.Rani
5. S.Meenakshi ... Appellants/Plaintiffs

(1st appellant died, recorded Vide memo dated 06.6.2019)

versus

1. The State of Tamil Nadu,
represented by its Collector of Cuddalore,
Cuddalore District.

2. The Revenue Divisional Officer,
Chidambaram.

3. The Tahsildar,
Chidambaram.

4. The Village Administrative Officer,
Adivaraghanatham.

5. T.Balasundaram

6. Bank of India,
B.Udaiyur Branch,
by Branch Manager. ... Respondents/Defendants

Prayer: Second Appeal is filed under Section 100 of code of Civil Procedure to against the judgment and decree of the learned Additional Subordinate Judge, Cuddalore, dated 30.10.2001 passed in A.S.No.41 of 1999 dismissing the appeal, confirming the judgment and decree of the Additional District Munsif Court, Cuddalore in O.S.No.631 of 1995 dated 17.06.1999.

For Appellants : Mr.R.Gururaj

NA for Respondents No.1 to 4 & 6

R5 : Dismissed on 19/10/2012

JUDGMENT

The present appeal is filed by the appellants/plaintiffs for a declaration that they owe no tax arrears to the State as concerning the suit properties, and for a consequential decree of injunction impugning an apprehended distraint proceedings under the Revenue Recovery Act.

2.The appellants 2 to 5 / plaintiffs 2 to 5 are the legal representatives of the deceased 1st appellant/1st plaintiff.

3. The brief facts which are necessary for the current purpose are that: A certain Shanmuga Mudaliar stated to have borrowed some amounts from the 6th defendant Bank by creating a mortgage over the suit properties, and the 6th defendant had filed O.S.No.157 of 1993 for recovery of mortgaged money before the Sub-Court, Chidambaram. In the meantime, the plaintiffs apprehended that distraint proceedings might be initiated under the Revenue Recovery Act, for the arrears of kist payable to the State.

4. The State filed its written statement, but, it later came to be set exparte. The Bank has filed its written statement contending that the plaintiffs owe some amount to it. Both the Courts below have held that the suit is not maintainable and accordingly, the appellants/plaintiffs are before this Court.

5. At the time of admission, the following substantial question of law was framed:

> ''Whether the lower courts could pass fresh judgments and decrees when only the sixth defendant had applied for and obtained orders for setting aside the ex parte decree.''

6. Heard the learned counsel for the appellants.

7. The submission of the learned counsel for the appellants was to the effect that the 6th defendant had obtained a preliminary decree in a mortgage suit in O.S.No.157 of 1993, but it did not proceeded to obtain any final decree and now it is time barred. Secondly, so far as the payment of kist is concerned, the property is not a cultivable land, but they lie barren. The Village Administrative Officer, Adivaraghanatham, has fraudulently prepared an Adangal, and based on the said document, the plaintiffs contend, that the tax arrears are likely to be fastened on them and therefore, they rushed to the Court with the present appeal.

8. The core issue in this case, as already indicated, is if the suit is maintainable. Without going into that question specifically, at the end of the day, unless the Government by

any statutory proceedings exempt any tax payable on any land, the owners thereof are liable to pay land tax/ kist to the State. This is obligatory. The plaintiffs have not pleaded that their lands are not exempted by any particular order or the proceedings of the Government from payment of kist.

9. The learned counsel for the appellants/plaintiffs submitted that if the plaintiffs are liable to pay kist, they will abide to pay the same but at any rate, the State shall not proceed to realise any amount outside the statute.

10. Admittedly, the Collector of Cuddalore District has not issued any notice under the Revenue Recovery Act, for realisation of any land revenue dues to the Government. While, it is an obligation of every responsible citizen to pay kist on demand, so far as this case is concerned, the plaintiffs have approached the court to prevent the statutory functionary from performing statutory duty, apprehending that they might perform their duty on a wrong basis. The suit is plainly premature as there is hardly any cause for the ongoing action. This Court does not find any merit in this appeal. And the conclusion arrived at does not support the existence of any substantial question of law.

11. Accordingly, this Second Appeal is dismissed and the judgment and decree of the Additional Subordinate Judge, Cuddalore, dated 30.10.2001 passed in A.S.No.41 of 1999 dismissing the appeal, confirming the judgment and decree of the Additional District Munsif Court, Cuddalore in O.S.No.631 of 1995 dated 17.06.1999 are hereby confirmed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

ssn

To
1. The Additional Subordinate Judge,
Cuddalore District.

2. The Additonal District Munsif Court,
Cuddalore District

3. The Section Officer,
   VR Section, High Court, Madras

+1cc to Mr.R.Gururaj, Advocate SR.No.45453

SR(CO)
GMY(13/11/2019)