

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

SA.NO.11 OF 2010

The Commissioner,
Chengalpattu Municipality,
Chengalpattu,
Kancheepuram District.

... Appellant/Plaintiff

vs.

R.Gunasekaran

... Respondent/Defendant

PRAYER:

Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 06.08.2009 in AS.No.32 of 2008 on the file of the Principal District Judge, Chengalpattu upholding the decree and judgment dated 30.07.2007 in OS.No.129 of 2006 on the file of the Principal Subordinate Judge, Chengalpattu.

For Appellant : Mr.V.R.Thangavelu

For Respondent : Mr.S.Udayakumar

J U D G M E N T

The unsuccessful plaintiff, the Commissioner, Chengalpattu Municipality, Chengalpattu before both the courts below is the appellant herein. The appellant/plaintiff filed a suit in OS.No.129 of 2006 before the Principal Subordinate Judge, Chengalpattu against the respondent/defendant directing the defendant to pay a sum of Rs.1,00,225.54 together with interest at the rate of 18% per annum on Rs.65,251/- from the date of the plaint till the date of realization.

2. The parties are referred as per their ranking in the original suit and at appropriate places, their ranks in the present appeal would also be indicated, if necessary.

3. The case of the plaintiff in nut shell:

The plaintiff conducted a public auction on 13.03.2002 for collection of daily rents from the vegetable market from

01.04.2002 to 31.03.2003 and the defendant was the successful bidder for a sum of Rs.2,53,000/-. The defendant was directed to deposit three months rent amount of Rs.63,250/- and also other charges and to pay the balance amount in nine equal monthly instalments at Rs.21,084/- on or before fifth of every English calendar month and in default, the defendant has to pay interest for the amount due at the rate of 18% per annum. The defendant deposited a sum of Rs.50,000/- on 13.03.2002 and Rs.13,250/- on 02.04.2002. Thereafter, the defendant deposited a sum of Rs.42,166/- on 10.07.2002, Rs.42,166/- on 30.09.2002 and another Rs.21,084/- on 18.10.2002 and thereafter, did not pay any amount. Thus, the defendant is liable to pay a sum of Rs.65,251/- together with interest at the rate of 18% per annum from the date of default till the date of payment of the entire amount. The plaintiff issued a legal notice dated 27.02.2006 (a copy of which is marked as Ex.A3) to the defendant and the same was duly received by the defendant as evidenced by the postal acknowledgment card (Ex.A4). In spite of receipt of the said notice, the defendant did not come forward to make good the payment and therefore, the plaintiff filed the suit for recovery of a sum of Rs.1,00,225.54/- with subsequent interest on Rs.65,251/- from the defendant.

4. The suit was resisted by the defendant on the ground that he is not liable to pay nine months rents together with interest at the rate of 18% per annum for the period from April 2002 to December 2002 to the plaintiff and that the plaintiff did not file the suit within a period of three years from 31.12.2012 and therefore, the suit is barred by limitation. He therefore prayed for dismissal of the suit.

5. The learned Principal Subordinate Judge, Chengalpattu after framing necessary issues, dismissed the suit filed by the plaintiff vide his decree and judgment dated 30.07.2007, on the ground that the suit is barred by limitation, since as per Article 55 of the Limitation Act, 1963, the period of limitation is three years and that the plaintiff filed the suit beyond the period of limitation. Aggrieved over the same, the plaintiff filed an appeal in AS.No.32 of 2008 before the learned Principal District Judge, Chengalpattu. The learned Principal District Judge, Chengalpattu vide his decree and judgment dated 06.08.2009, upheld the findings recorded by the trial court. Now, the present Second Appeal is filed.

6. When the matter came up for admission, notice regarding admission was issued to the other side and after several adjournments, the matter was listed today before this court.

7. Heard Mr.R.Thangavelu, learned counsel appearing for the

appellant and Mr.S.Udayakumar, learned counsel appearing for the respondent. The main contention of the learned counsel appearing for the appellant is that since, the Municipality is a part of "State" under Article 12 of the Constitution of India, Article 112 of the Limitation Act alone would apply in the present case and the period of limitation is 30 years.

8. This Second Appeal is admitted and the substantial question of law that arises for consideration is whether both the courts below were right in dismissing the suit as barred by limitation under Article 55 of the Limitation Act, 1963.

9. Mr.R.Thangavelu, learned counsel appearing for the appellant relied on the decision in Municipal Council, Samrala vs. Raj Kumar reported in (2006) 3 SCC 81 and contended that since the Municipality, being a part of the "State" under Article 12 of the Constitution of India, Article 112 of the Limitation Act would apply to the facts of the present case and that Article 55 of the Limitation Act, would not apply as observed by both courts below.

10. Per Contra, Mr.S.Udayakumar, learned counsel appearing for the respondent relied on the decision in Bharat Sanchar Nigam Limited vs. Pawan Kumar Gupta reported in (2016) 1 SCC 363 and contended that the appellant cannot claim that they are entitled to the benefits under Article 112 of the Limitation Act, because Article 112 of the Limitation Act makes it clear that the suit can be instituted by or on behalf of the Central Government or the State Government and that even though the Municipality is under the control of the State Government, it cannot be construed as a State Government within the meaning of Clause 3 (8) of the General Clauses Act, since the appellant / plaintiff is an independent and separate entity. His specific contention is that the reliance placed upon by the appellant to claim that as per Article 112 of the Limitation Act, there would be 30 years of Limitation period, is wholly misconceived.

11. At the outset, it may be observed that the plaintiff has claimed a sum of Rs.1,00,225.54 from the defendant together with interest at the rate of 18% per annum on Rs.65,251/-, on the ground that the defendant did not pay the rent amount for the period from April 2002 to December 2002. As per the proceedings of the Commissioner, Chengalpattu (Ex.A1), the rent amount should be paid on or before fifth of every English calendar month. Thus, the rent amount for the month of December 2002 should have been paid by the defendant on or before 05.12.2002. However, the plaintiff has filed the suit only on 23.03.2006. Both the courts below had observed that as per Article 55 of the Limitation Act, the right to sue starts from the date on which

the rent amount becomes due and that since the rent amount for the month of December 2002 became due and payable by the defendant on or before 05.12.2002, the plaintiff has not filed the suit within three years. Thus, both the courts below had concurrently held that the suit is barred by limitation.

12. It is relevant to point out that both the courts below failed to advert their attention to the relevant provisions of Tamil Nadu District Municipalities Act, 1920. It is relevant to extract Section 345 of the Tamil Nadu District Municipalities Act, 1920.

"Limitation for recovery of dues - No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the municipal council under this Act after the expiration of a period of twelve years from the date on which distraint might first have been made, a suit might first have been instituted, or prosecution might first have been commenced, as the case may be, in respect of such sum."

13. It is also relevant to point out that the word three years occurred in Section 345 of the Tamil Nadu District Municipalities Act, 1920 was amended as twelve by Tamil Nadu Act 36 of 2008. There is no doubt that the sum claimed is due from the defendant to Municipality and the suit is therefore in respect of the sum due to the Municipal council under the Tamil Nadu District Municipalities Act, 1920. Having regard to the words of the Section 345 of the Tamil Nadu District Municipalities Act, 1920, the suit falls clearly within its scope. Section 29 of the Limitation Act says that the Articles of the Limitation Act would not apply if under any Special Act, a special period of Limitation is made applicable for suits under that Act. The claim made by the plaintiff pertains to the year 2002 and the suit was filed in 2006. Hence, the period of Limitation on the date of the filing of the suit is three years. Since, the plaintiff has filed the suit beyond the period of Limitation, the suit is definitely barred by Limitation. I therefore hold that with respect to the question of Limitation, Section 345 of the Tamil Nadu District Municipalities Act, 1920 should govern the case and the period of Limitation is three years and the substantial question of law is answered accordingly.

14. In the result, the Second Appeal is dismissed. No costs. The decree and judgment dated 06.08.2009 passed in

AS.No.32 of 2008 by the Principal District Judge, Chengalpattu and the decree and judgment dated 30.07.2007 passed in OS.No.129 of 2006 by the Principal Subordinate Judge, Chengalpattu are upheld.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

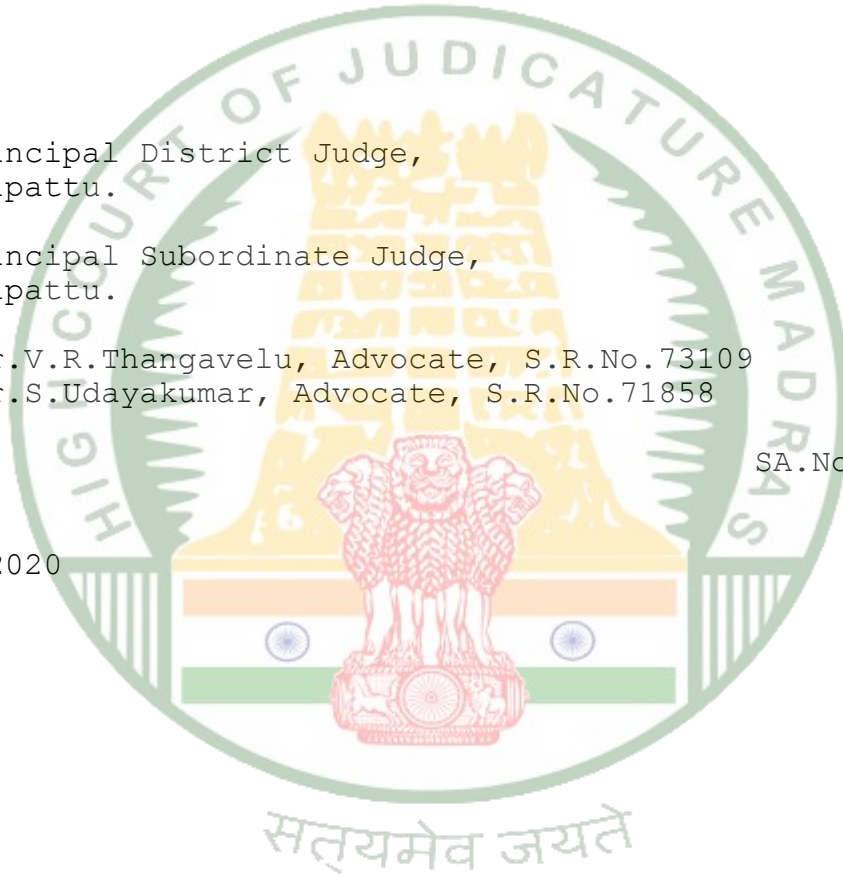
1. The Principal District Judge,
Chengalpattu.
2. The Principal Subordinate Judge,
Chengalpattu.

+1cc to Mr.V.R.Thangavelu, Advocate, S.R.No.73109

+1cc to Mr.S.Udayakumar, Advocate, S.R.No.71858

SA.No.11 of 2010

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