IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 18.10.2019	Date of Pronouncing Judgment 06 .11.2019

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

S.A.No.1323 of 2005

M.Mohammed Farook ...Appellant/Respondent/Plaintiff

Vs.

The Commissioner,
Mayiladuthurai Municipality,
Mayiladuthurai. ...Respondent/Appellant/Defendant

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 30.09.2004 made in A.S.No.201 of 2003 on the file of the Principal Sub-ordinate Judge, Mayiladuthurai, modifying the Judgment and Decree dated 10.10.2003 made in O.S.No.980 of 1996 on the file of the Additional District Munsif, Mayiladuthurai.

For Appellant : M/s.R. Shivakumar

For Respondent : M/s.Renuka Devi
for M/s.Hajee P.K. Jamal Mohamad

JUDGMENT

This second appeal has been filed by the plaintiff against the judgment and decree passed by the Principal Sub-Judge, Mayiladuthurai, in A.S.No.201 of 2003 dated 30.09.2004 modifying the judgment and decree passed by the Additional District Munsif, Mayiladuthurai in O.S.No.980 of 1996 dated 10.10.2003.

2. The appellant herein had filed a suit in O.S.No.980 of 1996 on the file of the Additional District Munsif, Mayiladuthurai, to declare the new and enhanced assessments of the property tax by the defendant in assessment No.6071 (Old assessment No.5571) from second half-year of 1993-1994 in respect of the plaintiff's building are illegal and consequently grant permanent injunction restraining the defendant from collecting property tax at the enhanced rate. The learned Additional District Munsif, Mayiladuthurai, by the judgment dated 10.10.2003 had decreed the suit as prayed for without costs. Aggrieved by the same, the defendant had filed an appeal in A.S.No.201 of 2003 on the file of the Principal Sub-Judge, Mayiladuthurai. The learned Principal Sub-Judge, Mayiladuthurai, by the judgment

dated 30.09.2004 had set aside the judgment and decree passed by the trial court and directed the plaintiff to present revision petition within thirty days from the date of judgment and allowed the appeal with the aforesaid modification. Feeling aggrieved, the plaintiff has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows:

The plaintiff is the owner of the building bearing D.No.67-B, Pattamangalam street, Mayiladuthurai town. The said building was purchased by the plaintiff from one Mohammed Syed on 20.04.1989. Even at the time of purchase, the building was leased out to the tenants for a monthly rent of Rs.1500/-. The building was assessed to property tax by the defendant with assessment No.5571. The half yearly tax for that building was Rs.1788/-. The said building is very old and is aged about more than 75 years and now it is in dilapidated condition. The defendant had sent a special and enhanced property tax notice to the plaintiff directing him to pay a sum of Rs.5364/- from the second half year 1993-1994 under the new assessment No.6071 without any basis and for the reason best known to the defendant. The demand for enhanced tax was illegal and not in accordance with the provisions of Tamilnadu Buildings (Lease and Rent) Control Act, 1960. As per the advise given by the officer of the defendant, the plaintiff had preferred a revision petition against the said enhanced amount and that revision petition has been pending. But the officials of the defendant had taken coercive steps for collecting the property tax by resorting to attachment of movables. Hence the plaintiff was constrained to file the above suit for the relief of declaration and permanent injunction.

5. The averments made in the written statement are in brief as follows:

The defendant Municipality had effected the general revision of property tax after observing all the norms and formalities as prescribed in the Municipal Act. The plaintiff had filed the above suit with a view to prevent the defendant from collecting the property tax. The civil court had no jurisdiction to entertain the suit. Therefore, the defendant prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif, had framed necessary issues and tried the suit. During trial, on the side of the plaintiff, the plaintiff examined himself as PW1 and he marked Exs.A1 to A12 as exhibits. On the

side of the defendant, one witness was examined as DW1 and one document was marked as Ex.B1.

7. The learned District Munsif, after considering the materials placed before him, found that the defendant had not followed the guidelines issued by the Government while revising the property tax. He further found that as against the assessment order passed by the defendant, the plaintiff had filed revision petition before the executive authority and the said petition was dismissed without assigning any reason and hence, the plaintiff is entitled to file the suit. He further found that since the defendant had not followed the guidelines while revising the property tax, the revised assessment order passed by the defendant is liable to be set aside. Accordingly, he decreed the suit as prayed for without costs. Feeling aggrieved, the defendant had filed an appeal in A.S.No.201 of 2003 on the file of the Principal Sub-Judge, Mayiladuthurai. The learned Principal Sub-Judge, Mayiladuthurai had allowed the said appeal and set aside the judgment and decree passed by the trial court and directed the plaintiff to present the revision petition within 30 days from the date of judgment and on such presentation of the revision petition, the defendant has to dispose of the said revision petition, after giving opportunity to the plaintiff to represent the case. Feeling aggrieved, the plaintiff has filed the present second appeal.

8. This court at the time of admitting the second appeal has formulated the following substantial questions of law:-

> "1. Whether the Appellate Court is right to remitting the matter to the Revision Authority after declaring the Assessment as illegal?
>
> 2. Whether the Appellate Court is right in remitting the matter after giving decision on the grounds of appeal?"

9. Heard Mr.R.Shiva Kumar, learned counsel for the appellant and Ms.MKV.Renuka Devi for M/s.Hajee P.K. Jamal Mohamad, learned counsel for the respondent.

10. Substantial Questions of law Nos.1 and 2:

The learned counsel for the appellant / plaintiff has submitted that the first appellate court erred in reversing the well considered judgment and decree of the trial court. He further submitted that there is no specific bar under the Tamil Nadu District Municipality Act, 1920, for filing suit before the civil court. He further submitted that the first appellate court failed to consider that the civil court's jurisdiction is not expressly ousted by the Tamil Nadu District Municipality Act, 1920. He further submitted that the first appellate court failed to consider that already the revision petition filed by the plaintiff was dismissed by the 'executive authority' without assigning any valid reason and as such no purpose will be served by filing revision once again before the 'executive authority' and therefore, he prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and restore the judgment and decree passed by the trial court.

11. In support of the aforesaid contention, the learned counsel for the appellant/plaintiff has relied upon the decision of this court in G.Viswanathan Vs. Kancheepuram Municipality represented by its Commissioner, Kancheepuram in S.A.No.561 of 2006 dated 10.04.2014.

12. Per contra, the learned counsel for the respondent/defendant has submitted that as per Section 9 of CPC, the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. She further submitted that as per Rule 9 of Taxation and Finance Rules (Schedule - IV) of the Tamil Nadu District Municipality Act, 1920 in respect of the general revision of the property tax, the aggrieved person can file revision petition before the 'executive authority' and if any such revision petition is filed, that will be disposed of by the 'executive authority' and the result shall be informed to the concerned person. She further submitted that as against the order passed by the 'executive authority' upon revision petition, an appeal shall lie under Rule 23 before the 'Taxation Appeals Committee.' She further submitted that as per Rule 26-B, further appeal has been provided to the District Court. She further submitted that as per Rule 28, the order passed by the Appellate Authority shall be final and therefore, the civil court's jurisdiction is impliedly barred. She further submitted that taking into consideration of the aforesaid facts, the first appellate court had directed the plaintiff to present the revision petition once again before the executive authority within 30 days from the date of judgment passed in the first appeal. Instead of complying with the said direction, the plaintiff had filed the present second appeal and the same is not maintainable and hence she prayed to dismiss the second appeal.

13. In G.Viswanathan Vs. Kancheepuram Municipality represented by its Commissioner, Kancheepuram (cited supra), it was contended on behalf of the Municipality that a suit questioning the assessment is clearly barred under the Statute and the remedy available to the respondent is elsewhere. This court has not specifically answered as to whether the civil

court's jurisdiction is barred or not. Further, the rules relating to filing of revision petition and appeal also not dealt with. Therefore, the aforesaid decision will not help the appellant/plaintiff.

14. Rule 9 of the Taxation and Finance Rules (Schedule-IV) of the Tamil Nadu District Municipality Act, 1920 specifically deals with the procedure with regard to the general revision of property tax. In that rule, it is specifically stated that when the assessment books have been prepared for the first time and whenever a general revision of such books have been completed, the 'executive authority' shall give public notice stating that the revision petitions will be considered if they reach the Municipal Office within a period of 60 days from the date of such notice in the case of the Government, a railway administration or a company and of 30 days from the said date in other cases. Rule 12 says that no petition under Rule 9, 10 or 11 shall be disposed of unless the petitioner has been given a reasonable opportunity to appear either in person or by authorised agent and to represent his case. Rule 13 says that immediately after the disposal of a revision petition, the 'executive authority' shall inform the petitioner or his authorised agent, either orally or in writing, of the orders passed thereon, shall direct him to pay the amount fixed on revision within fifteen days after the date of receipt of such intimation, or if the amount is not yet due, within fifteen days from the date on which it becomes due, and shall, if necessary, cause the assessment books to be corrected. Rule 23 says that an appeal shall lie to the 'Taxation Appeals Committee' in respect of the assessment and imposition of the taxes in respect of the order of the 'executive authority' under Rule 13 upon a revision petition.

15. Rule 26-B says that any appeal against the decision of the Taxation Appeals Committee may be filed within thirty days from the date of receipt of the order of the Taxation Appeals Committee in the District Court concerned.

16. Rule 28 says that the assessment or demand of any tax when no appeal is made as herein before provided, and when such an appeal is made, (the adjudication of the council thereon) shall be final.

17. From the aforesaid provisions, it is clear that a right has been given to challenge the general assessment and the aggrieved person can file a revision petition before the executive authority. As against the order passed by the executive authority, he can file an appeal before the Taxation Appeals

Committee, and further appeal has been provided before the District Court. Further, as per Rule 28, the order passed by the Appellate Authority shall be final.

18. At this juncture, it would be relevant to refer to the decision in (2003) 10 SCC 38 N.D.M.C. Vs. Satish Chand (deceased) by LR Ram Chand Appeal (Civil) 2700 of 1997 on the file of the Hon'ble Supreme Court 11.09.2003) wherein the Hon'ble Supreme Court has observed as follows:

> ''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 provide 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 C.P.C. against filing a civil suit. In Raja Ram Kumar Bhargava (dead) by LRs vs. Union of India [AIR 1988 SC 752] this Court observed: "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 Courts' 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 upon an element of election to the persons of inherence. To what extent, and on what areas and under what circumstances and conditions, the Civil Courts' jurisdiction is preserved even where there is an express clause excluding their jurisdiction, are considered in Dhulabhai's case."

19. From the aforesaid decision, it is clear that as per Section 9 of CPC, 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. An implied bar may arise when the statute provide a special remedy to an aggrieved party like a right of appeal as contained in Punjab Municipal Act. In this case, as already pointed out that the aggrieved party can file a revision petition before the executive authority against the assessment order. Against the order passed by the executive authority in revision petition, he can file an appeal before the Taxation Appeals Committee and further, appeal remedy also has been provided before the District Court. Therefore, this court is of the view that the civil court's jurisdiction is impliedly barred.

20. The first appellate court taking into consideration of the aforesaid facts and also the order passed by the executive authority does not contain any reason, it has passed the following order:

> ''11. In the result, this court gives a direction to the plaintiff/respondent to pay the arrears of property tax upto second half-yearly of 2003 and present a revision petition before the executive authority to reconsider the original tax assessment No.6071 (Old No.5571). The appellant shall entertain the revision petition and decide the revision petition within 15 days from the date of receipt of the revision petition from the plaintiff and pass an order. The plaintiff is directed to present the revision petition within 30 days from the date of judgment. The appellant shall give weightage to the rental value, age of the building and the depreciation clause and decide accordingly. The appeal is allowed without cost with a modified relief as above. The decree and judgment of lower court is set aside without cost.''

21. The plaintiff has to comply with the aforesaid directions. Instead of that he had filed the second appeal. Since the civil court's jurisdiction is barred impliedly, the second appeal is liable to be dismissed. Accordingly, the substantial questions of law are answered against the appellant/plaintiff.

22. In the result, the second appeal is dismissed. No costs. However, considering the fact that the defendant has not filed any appeal challenging the directions issued by the first appellate court, the plaintiff is directed to comply with the directions issued by the first appellate court within 30 days from the date of receipt of copy of this judgment. If any such

revision petition is filed, the respondent has to dispose of the same as directed by the first appellate court.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

gv

To

1. The Principal Sub-ordinate Judge, Mayiladuthurai.

2. The Additional District Munsif, Mayiladuthurai.

3. The Section Officer,
V. R. Section,
High Court, Madras.

+1cc to Mr.R. Shivakumar, Advocate SR.No.92083

+1cc to Mr.Hajee P.K. Jamal Mohamad, Advocate SR.No.91904

S.A.No.1323 of 2005

NR(CO)
GMY(21/08/2020)