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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

RSA-2244-1988 (O&M)
Date of decision : 27.03.2019

Mitter Sain Goel

... Appellant

Versus

Municipal Committee, Sunam

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. R.K. Aggarwal, Advocate
for the appellant.

Ms. Stuti Bamba, Advocate for
Mr. Ram Lal Gupta, Advocate
for the respondent.

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AMIT RAWAL, J. (ORAL)

The present regular second appeal is directed against the concurrent findings of fact, whereby the suit seeking permanent injunction for restraining the defendant-Municipal Committee, Sunam, from recovery of ₹891/- as house tax, as per assessment for the year 1982-83, in respect of property No.D-11-7 and 8, situated in the city of Sunam, forcibly and illegally, has been dismissed.

The plaintiff alleged that he was owner of the aforesaid property, which was assessed to house tax by the Municipal Committee, Sunam. On the basis of the assessment for the year 1982-83, on 17.05.1982, paid a sum of ₹291.60, however, in December 1982 i.e. 03.12.1982, was served with a demand notice, whereby the house tax was enhanced to

₹891/-, which was not according to the Rule.

The defendant opposed the suit by raising objection qua maintainability, locus standi and jurisdiction of the Civil Court. It was stated that the previous assessment was erroneous and a noticed under Section 67 of the Punjab Municipal Committee Act was served upon the plaintiff and amendment in the assessment was carried out. Sita Ram, father of the plaintiff, appeared, during the amendment of the proceedings, as the rental value of the property was increased.

Since the parties were at variance, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled to the injunction prayed for? OPP

2. Whether the plaintiff is owner of the suit property? OPP

3. Whether the assessment of house tax fee of ₹891/- for the year 1982-83 relating to the property, in question, is illegal? OPP

4. Whether the plaintiff has no locus standi to file the suit? OPD

5. Whether the suit is not maintainable in the present form? OPD

6. Whether this court has no jurisdiction to hear this suit? OPD

7. Whether the service of u/s 49 of the Punjab Municipal Act was necessary before filing the suit? If so its effect? OPD

8. Whether the plaintiff is estopped from filing the suit by his act and conduct? ODP

9. Relief.

Both the parties led evidence in support of their respective cases.

Mr. R.K. Aggarwal, learned counsel appearing on behalf of the appellant-plaintiff submitted that the judgments and decrees of the Courts below are not sustainable in the eyes of law as both the Courts below have non-suited the appellant-plaintiff. The suit was maintainable in the present form as the relief of declaration is inherent in a suit for injunction. Once the assessment was already over, the Municipal Committee was not n power to reopen the case. Non-challenge of notice under Section 67 of the Punjab Municipal Committee Act, by claiming the relief of declaration, in view of the submissions, aforementioned, cannot be said to be a ground for non-suiting the plaintiff. A procedure for the assessment of the house tax, by taking rental value, was not followed.

Per contra, learned counsel appearing on behalf of the respondent-defendant submitted that the suit was not maintainable in the absence of laying challenge to the notice, even otherwise, jurisdiction of the Civil Court was emphatically barred, thus, urges this Court for dismissal of the present second appeal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Aggarwal, for, the plaintiff miserably failed to challenge the notice under Section 67 of the Punjab Municipal Committee Act or belie the defence of the defendant, wherein, his father appeared for assessment of the house tax since 1978. Even notice regarding filing of the suit, as required under law, was not served upon the defendant as a necessarily corollary notice under Section 67 of the Punjab Municipal Committee Act remained valid.

Keeping in view the aforementioned facts, the judgments and decrees of the Courts below cannot be said to be suffering from illegality and perversity, much less, no substantial question of law arises for determination. No ground is made out for interference. Resultantly, the present second appeal is dismissed.

(AMIT RAWAL)
JUDGE

27.03.2019
Yogesh Sharma

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**