



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

S.A.(MD)No.1212 of 2011

WEB COPY

S.Munavarsulthana

... Appellant/Respondent/Plaintiff
-Vs-

Malika R.Gani

... Respondent/Appellant /Defendant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to call for the records pertaining to the Decree and Judgment dated 27.06.2011 made in A.S.No.78 of 2008 on the file of the Principal Subordinate Judge, Tiruchirappalli and set aside the same and thereby confirm the decree and Judgment dated 23.07.2007 made in O.S.No.414 of 2006 on the file of the II Additional District Munsif, Tiruchirappalli and allow the second appeal.

For Appellant : Mr.T.C.S.Thillainayagam
For Respondent : Mr.S.K.Mani

JUDGMENT

The plaintiff in O.S.No.414 of 2006 on the file of the Second Additional District Munsif Court, Tiruchirappalli is the appellant in this second appeal. The appellant purchased the property comprised in Survey No.234/1(B) measuring an extent of 1500 square feet from the defendant vide sale deed dated 14.09.2005 and registered as document No.3589/5. When the plaintiff purchased the property, it was a vacant site. The plaintiff wanted to put up a construction thereon. When he approached the Corporation of Trichy for getting the plan approval, he was informed that the vacant site tax had not been paid for the period from 1999-2000 till 14.09.2005. Since the plaintiff had to emergently obtain approval, she paid a sum of Rs.17,182/- to clear the aforesaid arrears. Thereafter, she issued Ex.A2-notice dated 17.12.2005 demanding reimbursement from the defendant. The defendant issued reply dated 13.01.2006 (Ex.A3) refusing to comply with the demand set out in the notice. Hence, the suit came to be instituted. The plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A5. On the side of the defendant, Ex.B1-letter issued by the local body on 07.11.2005 was marked. The learned trial Judge, after considering the evidence adduced on either side, by judgment and decree dated 23.07.2007 decreed the suit as prayed for. Questioning the same, the defendant filed A.S.No.78 of 2008 before the Principal Sub Court, Trichy. By Judgment and decree dated 27.06.2010, the Judgment and Decree passed by the trial Court was set aside and the appeal was allowed. Questioning the same, this second appeal came to be filed.



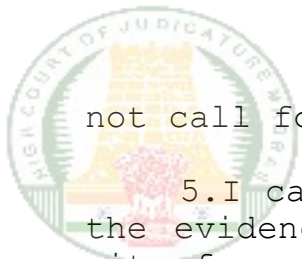
2.The second appeal was admitted on the following substantial questions of law:-

"1.Whether the first Appellate Court ought to have held that the defendant as vendor was statutorily liable to discharge the tax dues on the property in view of Section 55(1)(g) of the Transfer of Property Act in the absence of contract to the contrary?

2.Is not the Judgment of the first Appellate Court vitiated for its failure to draw adverse inference against the defendant for not entering the witness box?"

3.The learned counsel appearing for the plaintiff would point out that the defendant in her written statement had categorically claimed that till the date of sale, she had paid all the tax arrears for the land. But this claim was not at all established in evidence. He would further point out that the plaintiff having paid substantial sum towards sale consideration could not wait indefinitely to get the matter resolved. Therefore, the plaintiff cannot be blamed for paying a sum of Rs.17,000/- to the local body, when it was pointed out that tax dues remained unpaid. He would strongly contend that the first Appellate Court completely misdirected itself by holding that failure to notify the vendor about non payment of tax arrears would result in non-suiting the plaintiff altogether. He also would point out that the defendant avoided entering the witness box and therefore, adverse inference ought to have been drawn against the defendant. He submitted that the substantial questions of law deserve to be answered in favour of the appellant and pressed for restoring the decision of the trial Court.

4.Per contra, the learned counsel appearing for the respondent/ defendant would contend that the local body never issued any notice regarding tax arrears to the defendant. He drew my attention to Section 121 of Coimbatore City Municipal Corporation Act, 1981 which is applicable to the Trichy City Municipal Corporation and contended that there were three possibilities:- (a) tax was leviable under Section 121(2) or under Section 121(4). (b) it was not at all leviable. Even if the tax was leviable, still there can always be dispute regarding quantum. He called upon me to take judicial note of the fact that the tax payable by the assessee is sometimes arbitrarily and excessively assessed and therefore, the assessee is always at liberty to challenge the demand before the statutory tribunal. If only, the plaintiff had notified the defendant that according to the local body, vacant land tax is payable, the vendor could have taken an appropriate course of action. In the case on hand, the plaintiff never gave the vendor such an opportunity at all. The plaintiff having unilaterally satisfied the demand of the local body cannot now insist that defendant should make good the loss suffered by the plaintiff. He submitted that the judgment of the first Appellate Court rests on sound reasoning and that it does



not call for interference.

5.I carefully considered the rival contentions and went through the evidence on record. The plaintiff is a purchaser of a vacant site from the defendant vide Ex.A1 sale deed dated 14.09.2005. It is equally true that the demand for payment of the vacant land tax for the period from 1999-2000 till 14.09.2005 was made by the local body and that the plaintiff cleared the same. There cannot be any doubt that the vendor/defendant herein was obliged to clear the tax dues. This is a statutory obligation cast on any vendor under Section 55(1)(g) of the Transfer of Property Act, 188. The said provision states that the seller is bound to pay all public charges and rent accrued due in respect of the property upto the date of sale. Of-course, there is an exception. If the property is sold subject to encumbrance or if there is a contract to the contrary, the vendor is not liable. In the case on hand, the vendor had not examined herself. There is no evidence to show that she stood exempted from the aforesaid statutory liability. Therefore, I have to necessarily hold that there was liability on the vendor and that she failed to discharge the said liability. At the same time, I cannot ignore the stand taken by the defendant that she was never put on notice about non-payment of the vacant land tax by the local body. In the sale deed, the vendor had nowhere claimed that she had paid the tax dues. Of-course, in the written statement, she had pleaded that she had paid the tax dues on the land. But I have to go only by the recitals set out in Ex.A1. In Ex.A1, the vendor had undertaken specifically that if any encumbrances are found to exist and come to the knowledge of the parties later, she would clear the same personally. Hence, the plaintiff ought to have first notified the defendant about non-payment of the vacant land tax. She must have given reasonable time to the vendor to set right things. If even thereafter, the defendant did not clear the tax arrears, certainly the plaintiff could have paid the tax dues and claimed reimbursement from the defendant. But in the case on hand, no such opportunity was given to the defendant. By her unilateral act, the plaintiff foreclosed the remedies available to the defendant. The defendant has been presented with a fait accompli.

6.Thus, to some extent, there is default on the part of the plaintiff also. But the plaintiff cannot be non-suited on that ground. Therefore, even while answering the substantial questions of law in favour of the appellant, I am of the view that the plaintiff will not be entitled to 18% interest awarded by the trial Court. The vendor had been denied the right to question the quantum of tax arrived at by the local body. Therefore, in the interest of justice, even while setting aside the impugned Judgment and decree passed by the first Appellate Court, the suit is decreed in the following terms:-

"(I)the defendant is directed to pay a sum of Rs.17,182/- to the plaintiff on or before 01.08.2021.

<https://hcservices.ecourt.gov.in/hcservices/> In the event of failure to do so, it will carry



interest at the rate of 18% per annum with effect from 02.08.2021"

7.The second appeal is allowed accordingly. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal Subordinate Judge,
Tiruchirapalli
- .
- 2.The II Additional District Munsif,
Tiruchirappalli.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. 2 Copies

Judgment made in
S.A. (MD)No.1212 of 2011

18.06.2021

CN (30.06.2021) 4P 5C