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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

S.A.No.1016 of 2021

Belukurichi Kongu Community Welfare Trust,
Represented by its President, Mr.Arulprakasam,
Son of Rathnasababhathi,
4/95 Senthamangalam Taluk,
Namakkal District. ...Appellant/Appellant/Plaintiff

Vs.

The Special Officer,
Belukurichi Panchayat,
Belukurichi,
Senthamangalam Taluk,
Namakkal District. ...Respondent/Respondent/Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to allow the above second appeal by setting aside the judgement and decree dated 27.01.2021 made in A.S.No. 08 of 2017 on the file of the Additional Subordinate Court, Namakkal, confirming the Judgement and decree dated 28.09.2016 made in O.S.No. 68 of 2014 on the file of the Additional District Munisf Court, Namakkal.

For Appellant : Mr.Gokul
for Mr.S.Senthil

For Respondent : Mrs.R.Sripriya
for M/s.V.Raghavachari Associates

J U D G M E N T

This Second Appeal is filed against the Judgment and Decree dated 27.01.2021 made in A.S.No.08 of 2017, on the file of the Additional Subordinate Court, Namakkal, confirming the judgment and decree dated 28.09.2016 made in O.S.No.68 of 2014, on the file of the Additional District Munisf Court, Namakkal.

2. The appellant filed the suit seeking relief for mandatory injunction, directing the respondent to receive house tax for the house bearing No.4/95 in assessment No.2202, for the Assessment Years 2012-2013, 2013-2014; for the house bearing No.4/95-1, in assessment No.2203, for the Assessment Years 2012-

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2013, 2013-2014; to the house bearing No.4/95-2 in assessment No.2204, for the Assessment Years 2012-2013, 2013-2014.

3. The case of the appellant is that

(i) the suit property in Door Nos.4/95, 4/95-1, 4/95-2 at Grama Natham of Belukuruchi Village, in S.No.390/1, comes under jurisdiction of Namakkal Taluk. The appellant has been given authorization to file a suit in the trust deed dated 15.12.2004. The suit property, originally belong to the family of Belukurichi Mittadarar. Prior to abolition of jameen, the suit property was given to Kongunattu Gounders for constructing temple and for other use. After abolition of jameen, the suit property was classified as Grama Natham village in 1960. The suit property was enjoyed by the Kongunattu Gounders for long and they constructed a building in the suit property with two floors. The building was assessed to tax in assessment Nos.2202, 2203 and 2204. The door number for the assessment No.2202 is 4/95, the door number for assessment No.2203 is 4/95-1 and door number for assessment No.2204 is 4/95-2.

(ii) The appellant has been paying the house tax from 2011-2012. When they tried to pay tax for the assessment years 2012-2013 and 2013-2014, the present President of Belukurichi Panchayat has not come forward to receive the house tax. Therefore, a petition was given for receiving the house tax. On 07.02.2013, the Block Development Officer of Sendamangalam directed the authorities to receive the tax for the suit property. When the appellant attempted to pay the tax, the respondent has not come forward to receive the tax. Then the appellant took a demand draft for Rs.363/- representing the tax for the period 2012-2013 and 2013-2014 and sent to the respondent through registered post and the same was refused by the respondent. When the suit property was assessed for tax for 2011-2012, it was not open to the respondent to refuse to receive the tax amount, for the subsequent period. Therefore, the suit for the aforesaid reliefs.

4. The case of the respondent is that it is admitted that the suit property is situated in S.No.390/1. It is the claim of the respondent that, the suit property is neither Natham nor Gramanatham but it is a Government Poramboke. The claim of the appellant is that the suit property was enjoyed and given to Kongunattu Gounders and they constructed the building and enjoying the property is not correct. The real facts are that the suit property is a Government poramboke land. It belongs to the entire public of the Belukurichi Village. The former President of Belukurichi Panchayat belongs to Goundar community. With an ulterior motive, he regularised the illegal construction made by the Gounder community people and assessed the building for the tax, that is illegal. The suit property, belong to the public of the Belukurichi village. After the present President

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of panchayat took charge, he found this illegality and therefore, refused to receive the tax. The building in the suit property was illegally constructed and the appellant cannot pray for receiving tax for the building. Suit is bad for non-joinder of Government authorities. The suit is legally not maintainable and therefore, the suit is liable to be dismissed.

5. On the basis of the pleadings, the trial Court framed the following issues:

1. Whether the suit is bad for non-joinder of necessary parties?

2. Whether the suit can be maintained?

3. Whether the plaintiff is entitled for the relief for mandatory injunction prayed for?

4. Who is entitled to costs of the suit?

6. During the course of trial, P.W.1 to P.W.3 were examined and Exs.A1 to A10 were marked on the side of the appellant/plaintiff. D.W.1 was examined and Exs.B1 and B2 were marked on the side of the respondent/defendant. That apart, Exs.X1 to X4, were marked.

7. On considering the rival submissions, the learned trial Judge found that when the suit property is classified as Gramanatham, the appellant should have impleaded necessary Government officials as proper and necessary parties. Since necessary Government officials were not impleaded as parties, the suit is bad for non-joinder of necessary parties. It is also found that the suit is barred by Section 198G of Tamil Nadu Panchayats Act, 1994. In this view of the matter, the learned trial judge found that the appellant is not entitled for the mandatory injunction and dismissed the suit. The appellant filed the appeal against the judgment in A.S.No.8 of 2017. The learned first appellate Judge, concurred with the finding of the trial Court and dismissed the appeal. Challenging the said finding of the first appellate Court, the appellant has filed this second appeal.

8. Learned counsel for the appellant submitted that the suit property is a Gramanatham property, in which the appellant has constructed the building and enjoying the building. The property was also assessed for tax. Tax amount was received for the assessment year 2011-2012. Therefore, it is not open to the respondent to refuse to receive the tax amount, for the assessment year from 2012-2013. The dismissal of the suit, on the basis that the Government Officials were not impleaded as parties to the suit and the suit is barred under Section 198 G of Tamil Nadu Panchayats Act, 1994 is not legally correct. Therefore, the learned counsel for the appellant prayed for setting aside the judgment of the Courts below by allowing the

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second appeal.

9. In response, the learned counsel for the caveator/respondent submitted that when it is claimed that the suit property is a Gramanatam property/Government Poramboke land, it is necessary to implead District Collector and other Government Officials concerned, as proper and necessary parties for adjudicating the issue. That was not done in this case. Therefore, the suit is bad for non-joinder of necessary parties. That apart, in case of any dispute with regard to assessment of tax, civil case cannot be filed.

10. Considered the rival submissions and perused the records.

11. It is seen from the pleadings and the submissions of the parties that the appellant claimed the suit property as the land handed over to Kongunattu Gounders, prior to the abolition of jameen and Konbunattu Gounders are in possession and enjoyment of the suit property. Subsequently, they formed trust on 15.12.2004 and constructed the building in the suit property. However, perusal of the documents filed by the appellant shows that they produced receipts only from 2011, in respect of the payment of tax and documents related to the efforts taken for payment of tax. It is claimed in the plaint that after the abolition of jameen, the land was declared as Village Natham in the year 1960. As per the appellant's claim, the appellant is in possession and enjoyment of the suit land, even prior to 1960. However, the appellant has not produced any material to show that it is in possession and enjoyment of the suit land from the year 1960 or prior to the year 1960.

11(i) The case of the respondent is that the previous President of respondent panchayat belong to the same community of Kongu Gounder. He illegally permitted the appellant to construct the building in the suit property and assessed for tax. Then, the present President found illegality and refused to receive the tax. Ofcourse, these aspects have not been considered by the Courts below. However, it is the relevant factor. The fact that appellant has not produced any materials to show the enjoyment of land prior to 1960 till the building was constructed, shows that the claim of title and possession in respect of the suit property by the appellant is not correct.

12. That apart, be it is Village Natam and Government poramboke, the Government is proper and necessary party to have a say as to the claim of the rival parties. As rightly pointed out by the learned counsel for the respondent and found by the Courts below, the suit was found not maintainable for the reason that necessary Government officials concerned were not impleaded as party for effective and binding adjudication.

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Section 198 G of Tamilnadu Panchayat Act, reads as follows:

> "198-G. Appeal.-(1) Any person or employer aggrieved by any order or decision of the Executive Authority in relation to the payment of tax (including penalty, fee and interest) may, within such time as may be prescribed, appeal to the authority prescribed under Section 174.
>
> (2) The decision of the authority referred to in sub-Section (1) shall be final and shall not be questioned in any Court of law:
>
> Provided that no such decision shall be made except after giving the person affected a reasonable opportunity of being heard."

13. This Section makes it clear that any person aggrieved by an order or decision of executive authority in relation to the payment of the tax, may have to appeal to the authority prescribed under Section 174. The decision of the authority shall be final and shall not be questioned in any Court of law. In the case before hand, appellants have not resorted to this redressal mechanism and straight away filed the suit. Therefore, this suit is not maintainable.

14. Both the Courts below have also taken this view and this Court concurs with the view taken by the Courts below that the suit is not maintainable. For the reasons stated above, this Court finds that no substantial question of law arise for consideration in this second appeal.

15. In this view of the matter, this Court confirms the judgment passed in A.S.No.08 of 2017, on the file of the Additional Subordinate Court, Namakkal and confirming the judgment passed in O.S.No.68 of 2014, on the file of the Additional District Munsif Court, Namakkal. and dismisses the second appeal. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1.The Additional Subordinate Judge,
Namakkal.

2.The Additional District Munisf,
Namakkal.

Copy To:

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

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.2876

+1cc to Mr.S.Senthil, Advocate, S.R.No.2806 [27/04/2022]

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JPL(CO)
SB(28/03/2022)

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