IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

S.A. No.459 of 2017
and
C.M.P. No.11461 of 2017

Dr. M.R.Kanthiraj .. Appellant/Appellant/1st Plaintiff

Vs.

The Commissioner,
Ambur Municipality,
Ambur, Ambur Taluk,
Vellore District. .. Respondent/Respondent/Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree of the learned Subordinate Judge, Vaniyambadi, Vellore District dated 26.07.2016 in A.S. No.28 of 2013 confirming the judgment and decree of the learned Principal District Munsif, Ambur, Vellore District dated 03.09.2013 in O.S. NO.119 of 2009.

For Appellants	:	Mr. T.M.Hariharan
For Respondent	:	Ms. S.V.Supraja Government Advocate (C.S.)

JUDGMENT

The first plaintiff in suit in O.S. No.119 of 2009 on the file of District Munsif Court, Ambur, is the appellant in the above second appeal. The appellant along with his wife who is the second plaintiff, filed the suit in O.S. No.119 of 2009 on the file of District Munsif Court, Ambur, for a declaration that the new assessment and levy of property tax demanding from the year 1993-94 II to 2009-2010 I, is illegal and ultra vires and time barred one. The suit is also for consequential injunction restraining the defendant municipality from in any way taking or initiating recovery proceedings in furtherance of the notice of demand impugned in the suit.

2. The case of the appellant in the plaint is that the suit property is used as a hospital from the year 1973 having old assessment No.5469 corresponding to the new assessment No.23039

of Ward No.17. Though it is admitted that the building owned by the appellant is regularly assessed to property tax, it appears that a sum of Rs.2,49,836/- had been assessed and demanded for the period from 1993-1994 II to 2009-2010 I being the property tax, at a stretch for about 16 years. It is the case of the appellant that the defendant did not follow any procedure or issued prior notice as contemplated under the provisions of the relevant rules particularly Rule 8, 9, 9(A), 10 of the Schedule IV of the Tamil Nadu District Municipalities Act, 1920. From the pleadings it is seen that there is enhancement of property tax unilaterally for 16 years at a stretch without a show cause notice informing the basic factors required for deriving the enhanced tax.

3. A written statement was filed by the defendant / respondent on the ground that the suit itself is not maintainable as the plaintiff has not deposited 50% of the tax accessed by the defendant as held by this Court before challenging the demand notice. It is further stated that the property tax was assessed on the basis of relevant materials and following the procedure. It is also contended that the assessment for a period from 1993-1994 to 2009-2010 is in accordance with law. From the reading of the written statement, the respondent has not even referred to the informations or the basis on which the property tax was assessed. The particulars which were taken for the assessment are not found in the written statement. However, it is contended that the appellant has an alternative remedy of filing a revision before Chairman and further appeal to District Court.

4. The trial court, after framing necessary issues, specifically found that the defendant has not stated as to how they have followed the procedure as contemplated under the Act. Though a special notice like show cause notice which is required under the Act, should be issued before proceedings to determine the property tax payable by the assessee by way of revision of tax, no piece of paper is produced by the defendant / respondent to justify the actual demand for the period of sixteen years. However, the trial Court, after holding that the assessment of property tax was without any basis, held that the suit filed only on 17.08.2009, is beyond the period of three years. Stating that the plaintiff has knowledge about the order of assessment even in the year 2005, it is held the suit is barred by limitation. The trial Court also relied upon the admission of plaintiff who was examined as P.W.1. regarding the suit in O.S. No.03 of 1999 on the file Additional District Munsif Court, Vaniyambadi, filed by the President, Public Welfare Association, Ambur Town, to hold that the suit is also liable to be dismissed for suppression of material facts by drawing adverse inference against the plaintiff for not producing the judgment.

5. Aggrieved by the findings of the trial Court, the plaintiff preferred an appeal in A.S. No.28 of 2013 before the Sub Court, Vaniyambadi. The lower appellate Court also found that the assessment of property tax for the period of 16 years at one stretch without following the procedure contemplated under the Act and Rules cannot be sustained. However, referring to the suit in O.S. No.3 of 1999, the lower appellate Court found that there is already a decision of the competent Court regarding reassessment and that the plaintiff, suppressing the decision in O.S. No.3 of 1999, cannot seek the remedy of injunction. Aggrieved by the judgment and decree of the Courts below, the above second appeal is preferred by the first plaintiff. The second plaintiff died during pendency of proceedings.

6. From the facts borne out from the records, this Court is of the view that the plaintiff has come forward with a suit challenging the demand notice demanding property tax for the period from 1993-1994 II to 2009 -2010. The demand notice was issued demanding the tax up to the assessment year 2009. The suit is filed in the year 2009 and therefore, the suit cannot be dismissed on the ground of limitation. As regards the suit in O.S. No.3 of 1999, this Court is unable to find that the cause of action in the earlier suit and the present suit is one and the same. It is admitted that the earlier suit in O.S. No.03 of 1999 was not filed by the plaintiff but by the President, Public Welfare Association, Ambur Town. Assuming that the plaintiff is the member or Secretary of Association, unless there is identity of parties, issues and cause of action, this Court is unable to sustain the view expressed by the lower appellate Court that the present suit cannot be maintained without disclosing the earlier suit or by suppressing the earlier suit. The earlier suit was filed in 1999 and hence the demand notice in 2009 challenged in the present suit cannot be construed as one arising out of the same cause of action. The respondent is also a party. The respondent though refers to the suit in the written statement, there is no pleading about the identity of cause of action. Without the judgment, the Courts below has presumed so many things.

7. It is pertinent to mention that the judgment and decree in O.S. No.3 of 1999 was not even filed by any of the party to the suit. No specific plea is raised by the defendant as to how the judgment in O.S. No.3 of 1999 will prevent the plaintiff from filing the present suit. When both the Courts have concurrently held that the assessment of property tax was not by following due procedure at least by issuing a show cause notice, this Court is unable to sustain the reasons assigned by the Courts below to dismiss the suit.

8. First of all, this Court, on several occasions has found that a special notice which is in the nature of show cause notice is required to be served on the assessee before revision of property tax. In this case, the demand notice itself is for a period of sixteen years, at a stretch. In such circumstances, when it is not even the case of the defendant that an opportunity was given to the plaintiff with regard to the basic factors which are taken for calculating the property tax as per the Rules and the suit cannot be dismissed for the reasons given by the Courts below. The substantial questions of law are answered in favour of the appellant.

9. In view of conclusions reached above, this Court is of the view that the suit in O.S. No.119 of 2009 on the file of Principal District Munsif Court, Ambur, is maintainable and that the demand notice issued by the defendant which was impugned in the suit should be declared as null and void. However, this Court finds that the property tax is due for the period from 1993 - 1994 II. Since the suit is pending from the year 2009, this Court is of the view that liberty should be given to the respondent municipality to make fresh assessment after issuing special notice and following the procedure in accordance with law. As regards the arrears, the tax which was payable by the assessee up to the year 2009 shall be paid by the plaintiff as per the amount payable before revision. It is open to the respondent to make fresh assessment for the period mentioned in the impugned demand notice following the procedure and in accordance with and as permissible in law.

10. Accordingly, the Second Appeal is allowed by setting aside the judgment and decree passed by the learned Subordinate Judge, Vaniyambadi in A.S. No.28 of 2013 confirming the judgment and decree of the learned Principal District Munsif, Ambur in O.S.No.119 of 2009. The suit stands decreed. However subject to the liberty above preserved to the defendant to initiate fresh proceedings for assessment or revision of property tax up to the year 2009 and to recover the revised tax after following the procedure in accordance with and as permissible in law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

1. The Subordinate Judge,
   Vaniyambadi,
   Vellore District.

2. The Principal District Munsif,
   Ambur.

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.17567

+1cc to the Government Pleader, S.R.No.17627

S.A. No. 459 of 2017

SPD(CO)
SU(27/04/2022)