



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.448 of 2010

K.V.Balan (died)

2.Jalaja

3.Rekha

4.Rija

5.Raakhee

... Appellant/Appellant/Defendant

(Appellants 2 to 5 are brought on record as LR's of the deceased sole appellant vide order dated 26.04.2010 made in M.P.(MD)No.1 of 2010)

-Vs-

1.The State of Tamil Nadu,
Rep. by District Collector,
Dindigul.

2.The Divisional Excise Officer,
Palani.

... Respondents/Respondents/Plaintiffs

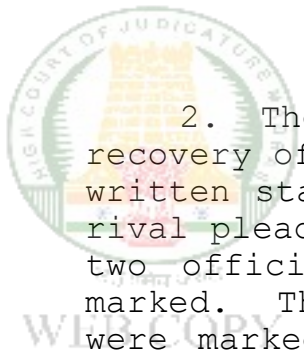
PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 28.10.2005 made in A.S.No.58 of 2003 on the file of the Principal District Court, Dindigul, confirming the judgment and decree dated 14.11.2002 made in O.S.No.166 of 1997 on the Subordinate Court, Palani.

For Appellants : Mr.R.Nanda Kumar

For Respondents : Mr.N.Muthuvijayan
Special Government Pleader

JUDGMENT

The sole defendant in O.S.No.166 of 1997 on the file of the Sub Court, Palani filed this second appeal. He passed away and his legal heirs have come on record.



2. The Government of Tamil Nadu filed the said suit for recovery of a sum of Rs.56,723/- with interest. The defendant filed written statement controverting the plaint averments. Based on the rival pleadings, issues were framed. On the side of the plaintiffs, two officials were examined as witnesses. Ex.A1 to Ex.A8 were marked. The defendant did not examine any witness. Ex.B1 to Ex.B7 were marked. After consideration of the evidence on record, the trial court by judgment and decree dated 14.11.2002 decreed the suit and directed the defendant to pay a sum of Rs.56,723/- with interest. Aggrieved by the same, the defendant filed A.S.No.58 of 2003 before the Principal District Judge, Dindigul. By the impugned judgment and decree dated 28.10.2005, the decision of the trial court was confirmed and the appeal was dismissed. Challenging the same, this second appeal came to be filed. Though the second appeal was filed way back in the year 2010, it has not been admitted till date.

3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to admit the second appeal after framing the substantial question of law and take it up for disposal.

4. Per contra, the learned Special Government Pleader submitted that no substantial question of law arises for consideration.

5. I carefully considered the rival contentions and went through the evidence on record. The original cause of action arose in the year 1984-85. The Government was then not in the liquor business but was content to receive only license fees. The original appellant was the highest bidder for one such arrack shop. However, he did not pay the kist in full every month. It also turned out that the supply of arrack was less than the assured quantity. The shortfall in supply led to filing of the writ petitions. Finally, the Government granted corresponding waiver in the matter of payment of kist. The defendant was still liable to pay a sum of Rs.32,279/-. Ex.A6 dated 12.06.1997 was issued and the defendant was called upon to pay the said amount with interest. As per the license terms and conditions, the defendant was liable to pay 5% penalty for belated payment. The defendant contended that he had filed O.S.No.2165 of 1988 and O.S.No.359 of 1988 before the Sub Court, Dindigul and that the suits were decreed and therefore, the present suit was barred by *res judicata*. The courts below held that the issue raised in O.S.No.2165 of 1988 and O.S.No.359 of 1988 filed by the defendant and the issue raised in the present suit were different and that therefore, the principle of *res judicata* cannot be pressed into service.

6. The fact remains that the defendant had undertaken to pay a particular sum as monthly kist for enjoying the privilege of running the arrack shop in question. Of-course, there was default on the



quantity. The issue was however resolved in the writ petitions filed by the licensees against the Government. The Government had also given a corresponding waiver in the matter of payment of kist. After giving due credit to the waiver, the defendant was still liable to pay a sum of Rs.56,723/-. The courts below have concurrently rendered a finding that the plaintiff had established that the defendant was liable to pay the said amount with interest. The only point that probably deserves consideration is whether the suit was time barred. The suit came to be laid on 02.08.1997, while the cause of action arose during 1984-85. But then, as per Article 112 of the Limitation Act, the Government can file a suit within 30 years. Therefore, the courts below rightly held that the suit was within time. The courts below have also correctly held that the levy of penalty at the rate of 5 % can only be from the date of plaint. The courts below have correctly appreciated the factual aspects and applied the correct legal principles. No substantial question of law arises for consideration. However, if the decree granted in favour of the original defendant in the aforesaid two suits has not been satisfied, then, certainly, the same can be set off against the present decretal claim. Likewise, there cannot be a personal decree against the legal heirs of the defendant. The plaintiffs will be entitled only to proceed against the properties of the deceased defendant.

7. With this clarification, the second appeal is dismissed. No cost.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Principal District Judge, Dindigul.
- 2.The Subordinate Judge, Palani.

Copy To

The Section Officer, Vernacular Records,
Madurai Bench of Madras High Court, Madurai. (2 copies)

+1 CC to M/s.SPL GP (SR-8339[F] dated 24/02/2022)

+1 CC to M/s.R.NANDAKUMAR, Advocate (SR-8872[F] dated 25/02/2022)

S.A.(MD)No.448 of 2010

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