BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**20.07.2022**
DELIVERED ON	**28.07.2022**

CORAM

THE HONOURABLE MRS.JUSTICE S.ANANTHI

S.A.(MD)No.216 of 2005
and
CROS.OBJ.(MD)No.20 of 2010

S.A.(MD)No.216 of 2005
Arulmigu Silambani
Chidambara Vinayagar,
Thirukovil Devasthanam
Devakottai Rep. by its
Executive Officer. ...Appellant/Appellant/Defendant

Vs.

Devakottai Municipality
represented by its Commissioner ...Respondent/Respondent/Plaintiff

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 21.02.2002 in A.S. No.111 of 2000 on the file of the learned Additional District Judge Cum Chief Judicial Magistrate, Sivagangai, confirming the Judgment and Decree dated 15.10.1999 in O.S.No.115 of 1998 on the file of the learned Subordinate Judge, Devakottai.

CROSS OBJECTION (MD)No.20 of 2010 :

Devakottai Municipality
represented by its Commissioner,
Devakottai. ...Cross Objector

vs.

Arulmigu Silambani
Chidambara Vinayagar,
Thirukovil Devasthanam ...Respondent

PRAYER: Cross Appeal filed under Order 41, Rule 22 of Civil Procedure Code, against the Judgment and decree dated 21.02.2002 passed in A.S. No.111 of 2000 and cross objection No.111 of 2000 by the learned Additional District Judge/Chief Judicial Magistrate, Sivagangai, by confirming the Judgment and Decree dated 15.10.1999 in O.S.No.115 of 1998 on the file of the learned Subordinate Judge, Devakottai.

In Second Appeal

For Appellant : Mrs.A.L.Gandhi Mathi

For Respondent : Mr.M.C.Samy, for
C.Rajaram

In Cross Objection

For Appellant : Mr.M.C.Samy, for
C.Rajaram

For Respondent : Mrs.A.L.Gandhi Mathi

O R D E R

S.A.(MD)No.216 of 2005 has been filed against the Judgment and decree, dated 21.02.2002 in A.S. No.111 of 2000 on the file of the learned Additional District Judge Cum Chief Judicial Magistrate, Sivagangai, confirming the Judgment and Decree, dated 15.10.1999 in O.S.No.115 of 1998 on the file of the learned Subordinate Judge, Devakottai.

CROSS.OBJ.(MD)No.42 of 2021 has been preferred against the Judgment and decree dated 21.02.2002 passed in A.S. No.111 of 2000 and cross objection No.111 of 2000 by the learned Additional District Judge/Chief Judicial Magistrate, Sivagangai, by confirming the Judgment and Decree dated 15.10.1999 in O.S.No.115 of 1998 on the file of the learned Subordinate Judge, Devakottai.

2.At trial, P.W.1 was examined and Exs.A.1 to A7 were marked on the side of the plaintiff and Exs.D.1 to Exs.D.108 were marked on the side of the defendant and no witness was examined.

3.Upon consideration of the evidence on record, the learned trial Judge decreed the suit in O.S.No.115 of 1998. Aggrieved over the same, the defendant has preferred an appeal in A.S.No.111 of 2000 and the plaintiff has filed Cross Appeal No.111 of 2000. The said appeal and the cross objection were also dismissed with Costs. Hence, this Second Appeal.

4.Heard on either side and perused the material documents available on record.

5.For the sake of convenience the contesting parties shall be referred to as Plaintiff and Defendant.

6.The second appeal had been admitted on the following substantial questions of law:

> Whether the Judgment of the Courts below in granting a decree for recovery of the property tax without considering whether the enhancement of property tax are legal and in

confirmity with Schedule IV of the District Municipalities Act?.

7.The Additional Substantial question of law is as follows:

1.Whether the arrears prior to 1995-1995 II part are not barred by limitation?

8.The Plaintiff has filed the suit in O.S.No.115 of 1998 for recovery of arrears of property tax with 6% interest regarding 'A' schedule property and charge decree for arrears regarding 'B' schedule property.

9.The Devakottai Municipality has filed the suit and the case of the plaintiff is that the 'A' schedule properties belonged to the defendant. The defendant has to pay arrears half yearly property tax from 1993-1994 to 1997 – 1998. The defendant has also acknowledged the arrears on 27.02.1998. So, the suit was filed to recover the amount.

10.The defendant has stated in his written statement that without giving any opportunity to him the Municipality has revised the tax and issued demand notice. The tax was demanded for the year 1993-1994 to 1995-1996 I part is barred by limitation. So, the suit may be dismissed.

11.The trial Court in O.S.No.115 of 1998 has decided that the tax for 1993-1994 to 1995-1996 I part are barred by Limitation. From 1995-1996 II part to 1997-1998 IV part the plaintiff is entitled for recovery of arrears and suit was decreed.

12.Against the Judgment, the defendant has preferred an appeal in A.S.No.111 of 2000 against the Judgment and Decree and the plaintiff has also filed cross objection. The first Appellate Court dismissed both appeal and cross objection and confirmed the Judgment and Decree of the trial Court.

13.Aggrieved by the Judgment and Decree in Appellate Court, the defendant has preferred this Second appeal.

14.The cross objection has filed in the second appeal by the respondent/plaintiff against the portion that . The trial Court dismissed the claim prior to 1995-96 II part as barred by limitation.

15.The ingredients of Section 117 A of TN District Municipalities Act, is extracted hereunder:

"117-A : Power to assess in case of escape from assessment :

"Notwithstanding anything to the contrary contained in this Act or the rules made thereunder if, for any reason, any person liable to pay any of the taxes or fee liable under this Chapter has escaped assessment in any half-year or year at a rate lower than the rate at which he is assessable, or in the case of property tax, has not been duly assessed in any half-year or year consequent on the building or land concerned having escaped proper determination of its annual value, the commissioner may, at any time, within six years from the date on which such person should have been assessed serve on such person a notice assessing him to the tax or fee due and demanding payment thereof within fifteen days from the date of such service ; and the provisions of this Act and the rules made

thereunder shall, so far as may be, apply as if the assessment was made in the half-year to or year which the tax or fee relates."

16.The relevant portion of the Judgment reported in ***2008 Writ L.R. 804, Razeena Begum and another Vs.Pudukottai Municipality Represented by its Commissioner and another,*** is extracted hereunder:

> *"**Held:** Section 89 of the Act makes it clear that any person, who is aggrieved by assessment of tax made by the Municipality, is entitled to approach the Taxation Appeals Committee – As far as the filing of appeal to Taxation Appeals Committee is concerned, the Section does not prescribe any condition for deposit of any amount – Municipality is entitled to make assessment of any tax which has escaped attention of the authority for a period six years from the date of assessment – Section 117-A which was introduced in year 1997 provides for a notice to be given to the assessee by the Municipality giving 15 days time – A demand notice has been given and a prior notice giving more than 15 days contemplated under Section 117-A of the Act was also given – Petitioners have submitted their objections and only after considering the same, final orders came to be*

passed in December, 2007 – Section 345 makes it clear that the claim made by the first respondent municipality is well within the time "

17.But the Section 117-A was included only in the year 1997 with effect from 27.12.1996. But as per Ex.A.2 the assessee acknowledged the liability to pay tax. So, as per Section 18 of Limitation Act the period of limitation run from 1998 and the suit was filed in the year 1998. So, the claim is well within a period of limitation.

18.Whether the tax assessed by the Municipality is arbitrary and without giving opportunity to the appellant/defendant.

19.As per Section 117-A of the Tamil Nadu District Municipalities Act, issued demand notice and demanded the tax within 15 days. The assesse should file his objection thereafter. But for the arrears the respondent has issued notices Ex.B.1 to Ex.B.45. The defendant sent reply only for time extension to pay the tax which were marked as Ex.A. 2 & A.4. The defendant has not raised any objection regarding the levy of tax.

20.The assessee has not filed any objection regarding the procedure adopted by the Municipality to levy the tax till the date of filing suit. Only in written statement, the assessee has raised the objection.

21.Further in the year 1998, the assessee acknowledged the tax and pray time for payment of tax through Ex.A.2 & Ex.A4. The assessee has not filed any documents to show that he objected the demand notices issued by the plaintiff. So, the trial Court has rightly dismissed the objection raised in the written statement. The first Appellate Court has also confirmed this aspect.

22.But, both Courts have committed error in non-consideration of Limitation Act. As per A2 reply the assessee acknowledged the liability in the year 1998. So, the claim is well within time and respondent/plaintiff is entitled for the decree as prayed for in the plaint.

23.Finally, this Second Appeal is dismissed and the Cross Objection is allowed and the Judgment and Decree, dated 15.10.1999 in

O.S.No.115 of 1998 passed by the learned Subordinate Judge, Devakottai is modified as suit is decreed as prayed for. No Costs.

28.07.2022

Index : Yes/No
Internet: Yes/No
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To

1. The Additional District Judge Cum
 Chief Judicial Magistrate,
 Sivagangai.

2.The learned Subordinate Judge,
 Devakottai.

3.The Section Officer,
 Madurai Bench of Madras High Court,
 Madurai.

S.ANANTHI, J.

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Judgment made in
S.A.(MD)No.216 of 2005

28.07.2022