IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.226 of 2018
and C.M.P.No.5764 of 2018
and C.M.P.No.4669 of 2023

1.A.Kandan (Died)

2.K.Ambiga

3.A.K.Velayudhan

4.A.K.Sarala

5.K.Manjula ... Appellants

(A2 to A5 are bring on record as LR's of the deceased A1 vide Court order dated 16.10.2023 made in C.M.P.No.19720/2021 in S.A.No.226/2018)

vs.

1.The Corporation of Vellore
by its Commissioner.

2.The Commissioner Zone I (Tharapadavedu),
Vellore Corporation. ... Respondents

PRAYER: Second Appeal is filed under Section 100 of Code of Civil Procedure, to allow the Second Appeal setting aside the Judgment and Decree of the learned Principal Subordinate Judge, Vellore, Vellore District dated 06.11.2017 in A.S.No.56 of 2015, confirming the Judgment and

Decree of the learned District Munsif, Katpadi, Vellore District dated 06.07.2015 in O.S.No.37 of 2012.

For Appellant : Mr.T.M.Hariharan

For Respondents : No Appearance

JUDGEMENT

The unsuccessful plaintiff is the appellant in this second appeal. The deceased appellant filed a suit for declaration that demand notice issued by respondents-Corporation claiming building tax for the periods 2010-2011 and 2011-2012 totalling a sum of Rs.23,680/- is incorrect, excessive and arbitrary and for consequential relief of permanent injunction restraining the respondents from enforcing the payment as per the demand notice. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the appellant/plaintiff is before this Court. Pending Second Appeal, original appellant died and his legal representatives were brought on record as appellants 2 to 5.

2. According to the appellant, he is an Ex-service man, who retired as Captain after serving in the Indian Army. He owns a building at Door No.0/1, L.F.Road, Kalpudur coming within the territorial limits of

respondents-Corporation. It is admitted fact that the building in question is a Kalyana Mandapam. It is claimed by the appellant that as an Ex-service man, he is entitled to exemption from payment of building tax to the local bodies. It is further averred that originally the respondents-Corporation levied a half year tax of Rs.4,087/- for the appellant's building and suddenly, it was increased to Rs.4,740/- in the year 2004-2005 and the appellant has been paying the same. In the year 2012, the respondents-Corporation issued a demand notice claiming tax arrears at Rs.23,680/- for the period 2010 - 2011 and 2011 - 2012. It was the specific case of the appellant that the said tax demand was made without any basis and the calculation of property tax arrived at by the respondents-Corporation was arbitrary. Hence, the appellant was constrained to file a suit for the above said relief.

3. The respondents-Corporation filed a written statement denying the averment of the appellant that as an Ex-service man, he was exempted from payment of property tax. Further, it was averred by the respondents-Corporation that if appellant was aggrieved by quantum of tax imposed by the respondents-Corporation, it is for him to prefer an appeal before the

Taxation Appellate Tribunal and the suit filed by him for the above said relief is not maintainable. The respondent-Corporation in its written statement also averred that the appellant has to pay building tax from the first half of 2009 - 2010 to second half of 2012-2013 at the rate of Rs.11,850/- per half year and the total arrears was Rs.94,800/-.

4. Though the respondents-Corporation filed written statement and opposed the suit thereafter, they remained *exparte* and the Trial Court after setting the respondents-Corporation *exparte,* proceeded with the trial.

5. The appellant was examined as PW.1 and 4 documents were marked on behalf of the appellant as Exs.A1 to A4.

6. The Trial Court on appreciation of evidence available on record, came to the conclusion that as contented by the respondents-Corporation in its written statement appellant paid tax upto the second half of 2008-2009 and he had been in arrears from first half of 2009-2010. The Trial Court also found from the evidence on record that the appellant has been paying the tax demanded by the respondents-Corporation from the year 2002 - 2003

without any objection and therefore, he was not entitled to question the same after accepting the levy of tax for more than 7 years. Hence, the suit was dismissed. Aggrieved by the same, the appellant preferred an appeal in A.S.No.56 of 2015 on the file of the Principal Subordinate Court, Vellore. The First Appellate Court came to the conclusion that if there is any grievance with regard to the imposition of tax, it is for the appellant to challenge the same in the manner known to law before the concerned authorities and the civil suit was not maintainable and consequently, dismissed the appeal. Aggrieved by the same, the appellant has come by way of this second appeal.

7. The learned counsel appearing for the appellant submitted that the levy of building tax was made by the respondents-Corporation, even without any prior notice to the appellant and when proper procedure for fixation of building tax was not followed by the respondents-Corporation, the appellant need not challenge the levy of tax before the authorities constituted under the Act and he can very well maintain a civil suit as respondents failed to follow the procedure established by law.

8. Though the First Appellate Court dismissed the appeal filed by the

appellant on technical ground that he has to challenge the levy of tax before the authorities constituted for that purpose and civil suit was not maintainable. The Trial Court on consideration of property tax card produced by the appellant as Ex.A1, came to the conclusion that the appellant has been paying building tax from the year 2002-2003 without any objection and lastly, he paid a sum of Rs.23,700/- as building tax for two half years namely 2008 - 2009. Therefore, it is clear from Ex.A1, in the year 2008-2009, the appellant paid two half years building tax of Rs.23,700/- to the respondents-Corporation. It means, in the year 2008-2009 itself, the half yearly tax was Rs.11,850/- as contended by respondents-Corporation in its written statement, the appellant's own document-Ex.A1 clearly proves the averments in Paragraph No.5 of the written statement filed by the respondents-Corporation that the appellant paid building tax upto 2008 - 2009 and he has been in arrears of building tax from the year 2009 - 2010 onwards. When it is proved before the Courts below based on the documents filed by the appellant that he has been paying building tax from the year 2002-2003 to 2008-2009 without any objection to the respondents-Corporation. It is not open to him to question the correctness of the tax imposed by the respondents-Corporation belatedly that too before the Civil

Court. It is seen from Ex.A1 accepting the half yearly tax of Rs.11,850/-, appellant paid Rs.23,700/- for the year 2008 - 2009. In such circumstances, the demand notice issued by the respondents-Corporation cannot be said to be illegal and arbitrary. Accordingly, I do not find any substantial question of law arising for consideration in this second appeal to interfere with the factual findings rendered by the Courts below.

In Nutshell:-

(i) Accordingly, the Second Appeal is dismissed.

(ii) Consequently, the connected civil miscellaneous petitions are closed.

(iii) In the facts and circumstances of the case, there will be no order as to costs.

06.11.2023

Index : Yes/No
Speaking order : Yes/No
Neutral Citation : Yes/No
dm

S.SOUNTHAR, J.

dm

To

1.The Principal Subordinate Judge,
Vellore, Vellore District.

2.The District Munsif, Katpadi,
Vellore District.

S.A.No.226 of 2018

06.11.2023