



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2023
CORAM

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

S.A.No.632 of 2015

Hemambujan

...Plaintiff

Vs

Cuddalore Municipality
Represented by its Commissioner
Municipal Office
Cuddalore

... Respondent

Prayer: This second Appeal is filed under Section 100 of C.P.C to set aside the Judgment and Decree of the learned II Subordinate Judge, Cuddalore passed in A.S.No.39 of 2011 dated 14.03.2014, reversing the Judgment and decree of the learned Principal District Munsif Court, Cuddalore passed in O.S.No.163 of 1992 dated 20.03.2003.

For Appellants

:M/s.J. Antony Jesus

For Respondent

: Mr.P. Srinivas



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JUDGEMENT

The Appellant herein was the plaintiff and the respondent herein was the second defendant before the Trial Court .

2. For the sake of convenience, parties will be referred according to their litigative status before the Court below.

3. The brief averment of the plaintiff the is extracted hereunder:

According to the plaintiff, he was the permanent resident of Cuddalore. On 20.02.1992 he was directed to appear before the second defendant to hear their appeal for the reduction of tax. The 4th defendant was also present there with 2nd respondent. This plaintiff further submits that the second defendant did not pass any order in his appeal. However, the subordinates of the second and 3rd defendant, have served distraint warrant to the plaintiff. In pursuance there of, the plaintiff issued a legal notice on 24.02.1992 to the defendants. Since, the 3rd and 4th defendants refused to receive the notice, the plaintiff filed a suit questioning about the enhancement of the tax.



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4. In spite of the pendency of the suit, the defendants 2 and 3 effected a sale to sell away the property of the plaintiff through auction, which is contrary to the provisions of law. It is the submission of the plaintiff that due to the act of the second and third defendants the reputation of the plaintiff was affected and she was forced to suffer with mental agony. Thus, the plaintiff has come forward seeking a compensation of Rs.15,100/- from the defendant. Though all the defendants have filed written statement, the second defendant alone is the party to this appeal.

5. The brief averment of the second defendant is extracted hereunder:

According to this defendant they have proceeded under distraint warrant as per law and it is their further submission of the defendant that the tax was revised as per G.O.M.S.No.1137. They further submitted that even the revision presented by the appellant was disposed on 20.02.1992 at 4.00 p.m. However, since the plaintiff refused to receive the said order, they were forced to affix the same at their door. Since, there was a huge arrear, it was



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necessitated for them to issue a distraint warrant on 21.02.1992. The tom
tom and other attachment procedure were effected only according to the law,
more particularly under section 350 of the District Municipalities act.
Therefore, this defendant submits that the very suit is liable to be dismissed.

6. Documents, evidence and finding of the both the Court below:-

Before the Trial Court, the plaintiff examined herself as P.W.1 and
21 documents were marked as A1 to A21. On behalf of the second
defendant, the third defendant was examined as D.W.1. No documents was
marked. After considering the oral and documentary evidence, the trial
Court found that there was Arbitrary exercise of power and has awarded a
compensation of Rs.15,100/-. Against which the second defendant preferred
an appeal. In which the first appellate Court by relying upon the provisions
under Order 2 Rule 2 has dismissed the suit on the ground that even when
they filed the suit against the order of the second defendant in O.S.135 of
1992, a cause of action existed for the plaintiff to proceed to seek for
compensation. Therefore, the subsequent suit in O.S.No. 163 of 1992 is hit



by the principles of the Order 2 Rule 2. Aggrieved with the same the appellant is before this Court.

7. Substantial Question of Law:-

When the Second Appeal was admitted , this Court has framed the following substantial question of law:-

1. Whether the suit filed by the appellant is barred by the provisions of Order 2, Rule 2 of the Civil Procedure Code.

2. Whether the lower appellate Court erred in law in wrongly applying the principles of Order 2, Rule 2 of the Civil Procedure Code to the present suit.

3. Whether the lower appellate Court erred in law in not adverting to the fact that the cause of actions for both suits are completely different and the cause of action of the 2nd suit arose only after the filing of the suit.

4. Whether the lower appellate Court erred in law in dismissing the suit simply as barred, without giving findings on all issues involved in the suit.



8. Submission of either side counsel:-

The learned counsel for the appellant/plaintiff would vehemently submits that without there being any pleadings, the first appellate court relied upon Order 2 Rule 2 of C.P.C, and would further contend that the earlier suit in O.S.No.135 of 1992 was filed against the order passed in respect of enhancement of tax, whereas O.S.No. 163 of 1992 was subsequently filed after the defamatory act of the second defendant.

9. It is the further submission of the learned counsel for the Respondent/appellant, that when they moved a suit in O.S.No.135 of 1992 there was no cause of action for seeking damages. It is the further submission of the learned counsel for the Plaintiff/appellant that, the very act of the defendant proceedings with the distraint notice with undue hurry, contravenes the principles of District Municipalities Act. Therefore, would contend that the very order passed by the first appellate Court is liable to be interfered with and prayed to allow this second appeal.



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10. Per contra the learned counsel appearing for the second defendant in all fairness would invite the attention of this Court in respect of the provisions of Section 350 the Tamil Nadu District Municipalities Act, 1920. It is the submission of the learned counsel for the respondent that the actions taken by the respondents was in accordance with the Section 350 of the Tamil Nadu District Municipalities Act, 1920 and there was no excess, and they were forced to issue a distraint notice only in view of large accumulation of due from the respondent. It is the further submission of the learned counsel for the respondent that there is no proof in respect of the defamation, and contended that there is no basis for quantum of damages.

11. I have given anxious consideration to either side submissions.

12. While considering the substantial question of law, as rightly contended by the learned counsel for the plaintiff/appellant, there is no pleadings in respect of the defence of order 2 Rule 2 of C.P.C. In the absence of any pleadings by the respondent herein, no possibility for the



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plaintiff to put fourth their ground, as to how the subsequent suit was not hit by Order 2 Rule 2 of C.P.C. Therefore, in view of the absence of pleadings and absence of grounds put fourth by the respondent herein, the very findings recorded by the first appellate Court in respect of order 2 Rule 2 to non suit the plaintiff is liable to be interfered with. Hence, the finding of the Lower Appellate Court that the suit is hit by Order 2 Rule 2 of C.P.C is perverse and liable to be set aside.

13. Apart from the above aspect, coming to the damages this Court has also found some sort of arbitrary exercise of power by the respondent. As rightly submitted by the learned counsel for the respondent, if we peruse Section 30 of the Tamil Nadu District Municipalities Act, 1920 (Schedule IV of Taxation and Finance Rules) 15 days time was provided to pay the amount revised by the second respondent.

14. In the case on hand admittedly the order was passed by the second defendant on 20.02.1992. But, without even giving 15 days time as provided



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under Section 30 of the Tamil Nadu District Municipalities Act, 1920 (Schedule IV of Taxation and Finance Rules) , on the very next day, a distraint warrant was issued only on 21.02.1992. Therefore, by the act of defendant, the plaintiff was deliberately denied her right of appeal.

15. For ready reference this Court deem it fit to extract Section 30 of the Tamil Nadu District Municipalities Act, 1920 (Schedule IV of Taxation and Finance Rules):

If the amount due on account of any tax is not paid within fifteen days from the service of the notice or bill or the giving of the direction referred to in Sections 95 and 102 and Rules 13 and 29 or within three days from the service of the notice referred to in Section 108, and if the persons from whom the tax is due, has not shown cause to the satisfaction of the executive authority why it should not be paid, the executive authority may recover by distraint under his warrant and sale of the movable property of the defaulter, the amount due on account of the tax together with the warrant fee and the distraint fee, and with such further



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sum as will satisfy the probable charges that will be incurred in connection with the detention and sale of the property so distrained.

16. Therefore, the harmonious reading of the above provisions, and the way in which the respondent proceeded against the plaintiff would demonstrate the arbitrary exercise of power by the defendant. Furthermore, the very conduct of the 3rd respondent who was the commissioner of 2nd respondent at the relevant part of time would exemplify the personal prejudice against the plaintiff.

17. It is pertinent to mention here that beating of tom tom by the authority in front of the residence of any person would definitely a grave concerned. Here the appellant has got 15 days time to respond to the notice. The hurried attempt of the defendant would definitely cause a mental agony to any persons. Under our constitution, Right to life with human dignity is one of the fundamental right guaranteed under Article 21. It means every persons has the inalienable right to live with dignified life without



discrimination.

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18. Here in this case the second and third defendants being a Government Servant, without realising valuable and inalienable right of the plaintiff and its ill consequences have proceeded illegally in an arbitrary way. Therefore, this Court is of the view that the plaintiff is entitled for a compensation. Though as rightly submitted by the learned counsel for appellant there is no material available to show as to the quantum of damages, considering the nature of illegality committed by the second and third defendants, and considering the petitioner's inalienable right of dignified life, this Court is of the view that the compensation awarded by the trial Court is not excessive.

19. In the result, this second appeal is allowed by reversing the order of the first appellate Court, thereby confirming the decree and Judgment of the trial court. The substantial questions of law are answered in favour of the appellant. No order as to Costs.



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20.10.2023

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Index : Yes/No

Speaking order/non-speaking order

To

1. The II Subordinate Judge, Cuddalore
2. The Principal District Munsif Court, Cuddalore

C.KUMARAPPAN, J.,

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