IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **18.03.2024**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.446 of 2021

1.The Assistant Commissioner,
Hasthampatti Ward Office No.II,
Salem City Municipal Corporation,
Hasthampatti,
Salem - 636 007.

2.The Commissioner,
Salem City Municipal Corporation,
Salem – 636 007. ... Appellants

-Vs-

S.B.Senthilkumar ... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code,1908, to set aside the judgement and decree dated 25.10.2019 in A.S.No.52 of 2019 on the file of the II Additional Subordinate Court, Salem, reversing the judgment and decree dated 16.08.2018 in O.S.No.228 of 2012 on the file of the II Additional District Munsif, Salem.

For Appellants : Ms.N.Devi

For Respondent : Mr.S.Nedunchezhiyan

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JUDGMENT

The defendants are the appellants before this Court.

2. The facts of the case are hereinbelow set out with the parties being referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S.No.228 of 2012 on the file of the II Additional District Munsif Court, Salem, to declare the impugned prosecution notice dated 18.01.2012 issued by the defendants in respect of the suit property as illegal, arbitrary, void, and unenforceable and consequently, seeking a relief of permanent injunction restraining the defendants and their subordinates from taking any distraint proceedings and prosecution proceedings pursuant to the aforesaid notice.

2.2. The case of the plaintiff is that the suit property belongs to him and his brothers *viz.,* B.Rameshkumar, B.Bathrinath and his cousins *viz.,* S.Srinivasan and S.Manivannan under two sale deeds dated 15.12.1989. At the time of purchase of the property, the plaintiff and others were minors.

2.3. The suit property is being used for running a lodge under the name and style of “Thirumagal Lodge”. The property tax was being levied in the name of the plaintiff's father, R.Balasubramanian. After the plaintiff and his cousins had attained majority, the property tax has been transferred in the name of the plaintiff as he is managing the affairs of the lodge now.

2.4. Earlier, the plaintiff's father, R.Balasubramanian had challenged the property tax revision for the period from 01.10.1993 in Tax Appeal No.8 of 2000 before the Taxation Appellate Tribunal of the second respondent Corporation. Under this revision order, the half yearly tax had been enhanced by 200% i.e., from Rs.3,290/- to Rs.11,760/-. The Appellate Tribunal had allowed the appeal and reduced the half yearly tax to a sum of Rs.5,880/- by its order dated 27.01.2000. The reduced tax was payable with effect from 01.10.1993. The plaintiff had also been paying the tax as per the said order. The plaintiff would submit that his father had sent a letter to the taxation authorities that the tax has been paid upto the first half of 2001.

2.5. While so, to the shock and surprise of the plaintiff, the first defendant had issued a prosecution notice dated 18.01.2012 (claiming arrears of tax from the first half of 1994-1995 till the second half of 2011-2012). The plaintiff immediately contacted the first defendant and provided the details of the earlier payments and stated that he was not in arrears of tax. The plaintiff also contended that the first defendant has not properly accounted all his earlier payments.

2.6. The plaintiff submitted that the first defendant has overlooked the fact that the arrears of tax, if any, can be claimed only upto 6 years from the defaulters. However, the impugned notice claimed arrears of tax was beyond the said 6 years. Therefore, it is the contention of the plaintiff that the prosecution notice is itself void. On 27.02.2012, the subordinates of the defendants had come to the property and informed the plaintiff that if amounts were not paid, steps would be taken to initiate distraint proceedings. Therefore, the plaintiff has filed the suit in question.

2.7. The first defendant had filed a written statement which was adopted by the second defendant, in which, they had denied the allegations raised against them and contended that the plaintiff cannot question the revision since the earlier order passed by the Taxation Tribunal was only for the period of the first half of 1998-1999. Therefore, the property tax has been revised from the second half of 1998-1999. The plaintiff was, therefore, directed to make payment of the revised charges. The defendants would submit that they issued a notice revising the existing half yearly property tax from Rs.23,520/- to Rs.28,224/-. The plaintiff has not made any payment from the year 1999-2000 (second half) to the year 2007-2008 (second half).

2.8. The defendants would submit that in the impugned notice, they had called upon the plaintiff to pay a sum of Rs.6,16,896/- after the orders were passed by the Tribunal and the tax arrears were recalculated and fresh notice dated 22.02.2012 was issued demanding a sum of Rs.3,09,680/- towards arrears of property tax. This notice has not been mentioned by the plaintiff in his pleadings. The defendants would further submit that the plaintiff, knowing the fact that he will not succeed in the appeal, has been remitting the amounts towards the tax. This amount has been adjusted towards the part payment of tax arrears. The defendants would submit that no further extension of time can be given to the payment of the said arrears.

TRIAL COURT AND LOWER APPELLATE COURT:

3. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A12. On the side of the defendants, the defendants had examined one Kumaravel as D.W.1 and marked Exs.B1 to B8.

4. The suit was dismissed by the learned Trial Judge. Challenging the same, the plaintiff has filed an appeal in A.S.No.52 of 2019 and also filed an application in I.A.No.2 of 2019 for an order of injunction restraining the defendants from taking any distraint proceedings and interfering with his possession and enjoyment of the suit property.

5. The Lower Appellate Court, on considering the evidence on record, allowed the appeal. The Lower Appellate Court has taken note of the fact that the defendants had not proved the fact that before revising the property tax for the years 1998-2008, special notice has been sent to the plaintiff. Though the defendants had filed Ex.B1 to show the attempts taken by them to deliver the notice on the plaintiff, it has to be taken note that the plaintiff has categorically denied the receipt of the special notice.

6. The Lower Appellate Court further held that the possession notice dated 29.02.2012 has to be set aside since the procedure has not been followed properly. The Lower Appellate Court has also directed the defendants to issue a fresh notice to the plaintiff in the prescribed form. Therefore, while allowing the appeal and setting aside the judgment and decree in O.S.No.228 of 2012, the learned Judge directed the second defendant to issue a fresh special notice to the plaintiff for the period of 1998-2008.

7. Challenging this judgment and decree, the defendants are before this Court.

8. Heard the learned counsel on either side and perused the materials on record.

DISCUSSION:

9. Admittedly, the plaintiff's father R.Balasubramanian had challenged the earlier revision for the period from 01.10.1993 before the Taxation Appellate Tribunal, Salem Corporation, and he had got the appeal allowed, in and by which, the tax has been reduced from Rs.11,760/- to Rs.5,880/-. The order has been passed by the Appellate Tribunal on 27.01.2000. No doubt, the impugned notice has been issued 12 years later. However, the special procedure contemplated under the Salem City Municipal Corporation Act has not been followed and for this reason, the Lower Appellate Court

has allowed the appeal, setting aside the impugned notice and while doing so, direction has also been issued to the second defendant/second respondent to issue a fresh special notice for the period 1998-2008 to the plaintiff. It is this order that is challenged by the Corporation.

10. Admittedly, the due procedure as contemplated under the Act has not been followed when issuing the notice and therefore, the entire procedure has to be set aside. However, the Lower Appellate Court protecting the interest of the appellant Corporation has directed issue of fresh notice to the appellants. The defendants/appellants have not made out any error in the judgment and decree passed in the first appeal and no substantial question of law has also been made out by them.

Accordingly, this second appeal stands dismissed. It is well open to the second defendant/second appellant to issue a fresh notice to the respondent/plaintiff and take steps therefrom. Consequently, connected C.M.P. stands closed. No costs.

18.03.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
ssa

To

1.The II Additional Subordinate Court, Salem.

2.The II Additional District Munsif, Civil Judge (Junior Division), Salem.

3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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