

S.A.No.467 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 15.04.2025

Judgment Delivered on : 09.07.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A. No.370 of 2002

Tiruchirapalli Municipal Council
by its Commissioner,
Tiruchirapalli.

Vs

... Appellant

J.Ponnulakshmi

... Respondent

Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 28.08.1998 passed by the Principal Subordinate Judge, Tiruchirapalli in A.S.No.31 of 1998 in reversing the judgment dated 18.09.1997 and decree in O.S.No.652 of 1992 on the file of the III Additional District Munsif Court, Tiruchirapalli.

For Appellant : Mr.P.Srinivas

For Respondent : Mr.S.Ramesh

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J U D G M E N T

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The second appeal has been filed challenging the judgment and decree dated 28.08.1998 passed by the Principal Subordinate Judge, Tiruchirapalli in A.S.No.31 of 1998 in reversing the judgment and decree dated 18.09.1997 in O.S.No.652 of 1992 by the III Additional District Munsif, Tiruchirapalli.

2.The Appellant is the defendant and the respondent is the plaintiff in the suit in O.S.No.652 of 1992 on the file of the District Munsif Court, Tiruchirapalli. Originally, the suit was filed by the plaintiff for permanent injunction restraining the defendant, his men, agents and servants from collecting any tax for Door No.37-A under the assessment No.44637.

3.For the purpose of convenience, the parties are described as per their ranking in the Trial Court.

4.The case of the plaintiff is that she is the owner of the house i.e., tiled house and terrace building bearing Door Nos.37-A and 37-A-1 in

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Nachiar Palayam, Woraiyur, Tiruchi-3. The said property was purchased by the plaintiff under a registered sale deed dated 08.06.1987. After purchasing the said property, she filed an application before the defendant for sub-division of T.S.No.40. While that being so, the same was sub-divided and as such T.S.No.40/1 measuring 0.11 sq.mts pertains to the plaintiff and T.S.No.40/2 measuring 0.005 pertains to Chellathammal. Subsequently, the plaintiff was given hand books with regard to property assessment. While so, Door No.37-A was assessed in Assessment No.45970 and Door No.37-A-1 was assessed in Assessment No.45972. Both Assessments stand in the name of the plaintiff. Further, in the hand book, the aforesaid property is said to be situated in Nachiarpalayam Street and the plaintiff had paid house tax for the property till 1990-1991 second half. The plaintiff claims that she owns a terraced house and a small building bearing Door Nos.37-A and 37-A-1 in Nachiar Palayam Road, Woraiyur, Trichy. Except these two houses, the plaintiff does not own any other house at Nachiar Palayam or Vellala Street. When this being the case, a notice dated 27.02.1992 was received by the plaintiff from the defendant, wherein it was stated that the plaintiff has to pay a tax amount of Rs.410/- for Assessment No.44637 and the said Assessment being made for Door No.37-A. Therefore, the claim of the

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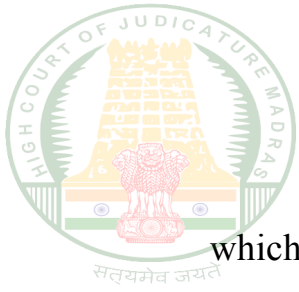


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plaintiff is that when Door No.37-A has already been assessed in Assessment No.45970 being situate at Nachiar Palayam, the same house cannot have two different assessments, therefore the assessment for Door No.37-A vide Assessment No. 44637 is not correct. Therefore, the plaintiff is not liable to pay any tax for assessment No.44673 and also she is not liable to pay arrears of Rs.3,460/-.

5. The written statement filed by the defendant Tiruchirpalli Municipal Council denying the allegations contained in the plaint. They have stated that the plaintiff owns a terraced house and a small building bearing Door Nos.37-A and 37-A-1 at Nachiarpalayam Road, Woriyur, Trichy. Actually, for the aforesaid property, there is no entrance in Nechiarpalayam Road and the only entrance is in Vellala Street. Hence, they have merged both Assessment Nos.45970 and 45972 [Door Nos.37-A and 37-A-1] and a single assessment for the said property has been given under Assessment No.44637 for Door No.37-A and there is no Door No.37-A-1. The demand has been revised into a single one under Assessment No.41637 and corrections have been made accordingly and therefore, the plaintiff cannot have any grievance that she has been given demand for the property

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which does not belong to her. The Assessment is under Assessment No. 44637 with half yearly tax of Rs.608.70 and there is arrears of Rs.3,460/- and the same was duly informed to the plaintiff. Hence, the plaintiff is certainly bound to pay the said arrears. Further, there are no assessment Nos.45970 and 45972 in the name of the plaintiff. Therefore, the assessment for Door No.37-A under new Assessment No.44637 and consequential demand for arrears of Rs.3,460/- is legally sustainable.

6. Before the trial Court, on the side of the plaintiff, one Rajendiran was examined as P.W.1 and Exs.A-1 to A-12 were marked. On the side of the defendant, one Natarajan was examined as D.W.1 and Exs.B.1 to B.2 were marked.

7. The Trial Court after framing issues and after hearing the submissions of the respective counsels dismissed the suit. Hence, the plaintiff filed appeal in A.S.No.31 of 1998 before the Principal Subordinate Judge, Tiruchirapalli. By judgment and decree dated 28.08.1998 passed in A.S.No.31 of 1998, the learned Principal Subordinate Judge, Tiruchirapalli, reversed the judgment and decree of the trial Court and allowed the appeal.

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Aggrieved by the same, the defendant Tiruchirapalli Municipal Council has preferred this second appeal.

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

9. The second appeal was admitted by this Court on 28.03.2002, on the following substantial questions of law :-

(i) Whether the lower appellate Court is justified in ignoring the finding of the trial Court that there was no cause of action for the suit ?

(ii) Whether the lower appellate Court is right in drawing adverse inference when the appellant had filed I.A.No.376 of 1998 in raising additional evidence?

10. It is not in dispute that the plaintiff owns properties bearing Door Nos.37-A and 37-A-1 at Nachiar Palayam, and that these properties were assessed separately under Assessment Nos.45970 and 45972, and she

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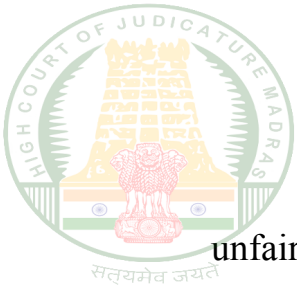


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had been paying taxes accordingly. It is also not disputed that the Municipality had thereafter issued a fresh demand under Assessment No. 44637 for Door No.37-A, stating that the earlier assessments were merged and that the said property fronts Vellala Street and not Nachiar Palayam Road. These factual aspects, especially as to the physical location of the property, the access to the same from Nachiar Palayam Road or Vellala Street, and whether the property assessed under Assessment No.44637 is the same as or different from those assessed earlier under Nos.45970 and 45972, were not properly examined and established by the First Appellate Court.

11. While compliance with the principles of fairness and natural justice is undoubtedly essential in any adjudicatory process, the appellate Court erred in setting aside the order without undertaking a proper evaluation of the evidence or conducting an independent fact-finding inquiry. The dispute ought not to have been decided solely on procedural lapses, particularly when the municipality had raised a lawful and subsisting tax demand. Deciding the case without considering the merits may lead to

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unfairness and weaken the proper authority of the municipal body

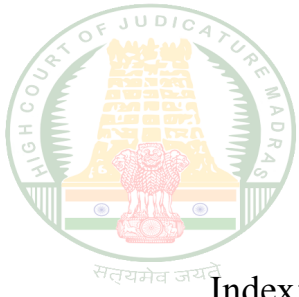
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12. In a civil suit of this nature, where the identity and assessment of immovable property is in question, the factual matrix must be thoroughly investigated and established. The appellate Court, being the final fact-finding authority, was duty-bound to do so. The absence of any such effort has rendered the judgment of the First Appellate Court unsustainable.

13. In view of the above, the judgment and decree dated 28.08.1998 passed in A.S.No.31 of 1998 by the Principal Subordinate Judge, Tiruchirapalli, is hereby set aside. The matter is remanded to the First Appellate Court for fresh disposal. The appellate court shall ascertain the necessary factual aspects, including the location, boundaries, and street access of the properties in dispute. For this purpose, if deemed necessary, the appellate court may appoint an Advocate Commissioner to inspect the property and verify the physical features relevant to the assessment. Upon completion of such enquiry, the appellate court shall reconsider the appeal and pass a reasoned order in accordance with law. Accordingly, the second appeal is allowed. There shall be no order as to costs.

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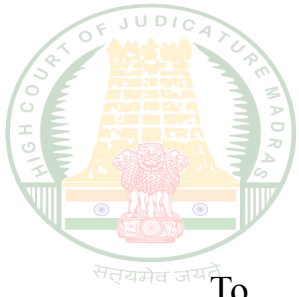
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Speaking Order/Non-speaking Order

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- 1.The Principal Subordinate Judge,
Tiruchirapalli.
- 2.The III Additional District Munsif,
Tiruchirapalli.

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P.VELMURUGAN, J.

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