

(1992) 01 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 697 of 1979

Banarsi Dass

APPELLANT

Vs

Municipal Committee Kurali

RESPONDENT

Date of Decision: Jan. 9, 1992**Acts Referred:**

- Punjab Municipal Act, 1911 - Section 74

Citation: (1993) 103 PLR 195**Hon'ble Judges:** A.S. Nehra, J**Bench:** Single Bench**Advocate:** H.L. Sarin and Ashish Handa, for the Appellant; Nemo, for the Respondent**Final Decision:** Dismissed

Judgement

A.S. Nehra, J.

This appeal is directed against the judgment and decree dated January 2, 1979 passed by the Additional District Judge, Rup Nagar, by which the appeal filed by the plaintiff-appellant was dismissed and the judgment and decree passed by the trial Court on October 7, 1978 was upheld by which the suit filed by the plaintiff-appellant was dismissed.

2. The brief facts of the case are that the defendant-respondent Municipal Committee, Kurali, (hereinafter called "The Committee") assessed property No. 140, situated in ward No. 3 at Kurali to house tax imposing liability for payment of the same on the plaintiff-appellant. The Committee also started recovery proceedings. The plaintiff felt aggrieved and he accordingly brought the suit for permanent injunction seeking to restrain the committee from recovering the house tax levied on the property in question for the period 1967 to 1974. The levy and the assessment of the house tax on the property in question has been challenged on the grounds inter alia that he is not the owner of the property in question which stands in the name of his sons Prem Singh, Surinder Kumar and Pawan Kumar who had purchased the

same from Mam Raj and Achhbal Singh vide sale deeds dated 16.8.1965 and 29.12.1965 and that even previous notices have been received in the names of his sons and they are now in occupation of the same. The imposition and assessment of the tax has been assailed on the ground that the committee has failed to comply with the provisions of sections 62 to 66 of the Punjab Municipal Act (hereinafter called the "Act") contending that these provisions are mandatory and their non compliance renders the assessment invalid, illegal and void. It was also alleged that the recovery of house tax by the committee from the period 1961 to 1967 was challenged by the plaintiff in a suit titled Ram Rattan v. M. C. Kurali and that suit was decreed. The assessment has also been challenged in another suit No. 604 of 2.5.1972 titled Ram Lal etc. v. M. C. Kurali, decided on 25.7.1973 by the learned Sub Judge, Kharar. The recovery of the house tax for the period from April 1, 1964 to March, 31, 1972 was declared to be illegal and ultravires. The assessment for the year 1972-73, was adopted on March 3, 1974, vide resolution No 2/80 whereas the assessment for the year 1973-74 was approved and adopted on February 22, 1974 vide resolution No. 6 assessment for the year 1974-75 was adopted on March 30, 1975. The plaintiff contended that since the impugned assessment and the impugned recovery proceedings launched by the committee are illegal, ultravires, arbitrary and without authority, the plaintiff-appellant is entitled to the injunction prayed for

The defendant-Committee in its written statement submitted that the plaintiff-appellant is the owner of the property in question. It was stated that the property stands in the name of the plaintiff in its records, Regarding the vires of the assessment and the recovery proceedings, it was maintained that the imposition and the assessment are quite legal, valid and in order and that the provisions of law had been complied with. It was of course admitted that the Committee is not demanding any tax for the years 1964-65 to 1971-72. It was further submitted that plaintiff is liable to pay the house-tax for the subsequent period in question. An objection was also raised that the suit is not maintainable as no notice u/s 49 of the Act, has been served upon the Committee.

3. On the pleadings of the parties, the following issues were framed :-

(1) Whether the assessment made by the defendant regarding the period from 1967 to 1973 is illegal, ultravires and against law ? OPP

(2) If issue No. 1 is proved, whether the plaintiff is entitled to the injunction prayed for ? OPP.

(3) Whether notice u/s 49 of the Punjab Municipal Act is required. If so, its effect ? OPD.

(4) Relief.

4. The trial Court decided issues No. 1 and 2 against the plaintiff-appellant and dismissed the suit.

5. Learned counsel for the appellant has assailed the validity of the assessment of the house tax under two heads. The first head is that he was not the owner of the property in question and as such he was not liable to pay any tax. The second objection raised by the appellant is that the Committee has failed to comply with the provisions of sections 62 to 66 of the Act and their non-compliance renders its assessment invalid.

6. I will first take up the point whether the plaintiff-appellant is owner of the property in question or not. In order to prove that the property in question is owned by the sons of plaintiff-appellant, the plaintiff appellant as PW-1 has stated that he is not owner of the property and has also got proved two sale-deeds Exhibit P-1/A and Exhibit P-1/B. These sale-deeds have been proved by Laik Ram, who appeared as PW-2. However, in my view, the plaintiff-appellant has not been able to establish that he is not liable to pay the tax on the ground that he is not the owner of the property. The sale-deeds produced on the file do not fix the identity of the property and it cannot be held that the sale-deeds pertain to the same property which has been assessed to the house tax. This is particularly so when the plaintiff-appellant never stated that he does not own any property in Ward No. 1. It is pertinent to note that he had filed objections and thereafter availed of the remedy of appeal under the provisions of section 84 of the Act, It is of course another thing that he got the appeal dismissed. It is also in evidence that he filed another suit in the Court of Sub Judge, Kharar, in respect of the property in question, but that suit was dismissed as withdrawn. These circumstances are indicative of the fact the plaintiff-appellant is liable to pay the tax in question, otherwise he would have pursued the appeal and the suit filed by him to a logical end.

7. There is another point which may be considered in this respect. u/s 74 of the Act, in case the property is transferred, then it is the duty of the transferer and the transferee to intimate the committee of this fact but it would appear that the sons of the appellant never adopted that course. If they had become owners of the property, then they ought to have given notice to the committee u/s 74(1) of the Act. In para 1 of the plaint, it has been asserted by the plaintiff appellant that previous notices were received in the names of sons of the plaintiff-appellant, but these were never produced by the plaintiff appellant nor did he produce any of his sons in support of his case. Therefore, there is no force in the contention of learned counsel for the appellant that the appellant is not liable to pay tax on the ground that he is not owner of the property.

8. Coming to the second objection, I do not think it can be said that the committee has committed any illegality or material irregularity in making the assessment in question. No recovery of the tax is being effected upto the period ending March 31, 1972. The Committee only wants to effect recovery of house tax for the period

subsequent to March 31, 1972. It would appear from the perusal of the plaint and the statement of the plaintiff-appellant that the committee has complied with the provisions of sections 62 to 66 of the Act. It is stated in para 6 of the plaint that assessment list for the year 1972-73, was adopted vide resolution No. 2/80 on March 3, 1972. The appellant in his cross examination admitted that he received notice in respect of the assessment for the year 1973-74 and then he filed objections. He went on to depose that he went in appeal against the decision of the committee but later on withdrew the same. He further stated that the tax was levied on him and he filed a suit in the Court of Sub Judge, Kharar, but that suit was also dismissed as withdrawn. In view of the above mentioned circumstances the appellant cannot come round and say that the committee has failed to comply with the essential requirements of law relating to the levy of tax on the property in question.

9. In view of the above mentioned discussion, there is no merit in this appeal and the same is dismissed.