(2009) 09 MAD CK 0215

Madras High Court (Madurai Bench)

Case No: S.A. (MD) No. 267 of 2005

Mangayarkarasi	APPELLANT
Vs	
The Kumbakonam Municipality	RESPONDENT

Date of Decision: Sept. 11, 2009

Citation: (2009) 5 CTC 220

Hon'ble Judges: A. Selvam, J

Bench: Single Bench

Advocate: Santharaman, for the Appellant; D. Malaichamy, for the Respondent

Final Decision: Allowed

Judgement

A. Selvam, J.

The judgment and decree dated 6.11.2003 passed in Appeal Suit No. 119 of 2003 by the Principal Sub-Court, Kumbakonam are being challenged in the present Second Appeal. The appellant herein as plaintiff has instituted Original Suit No. 3 of 2000 on the file of the Principal District Munsif Court, Kumbakonam for the reliefs of declaration and perpetual injunction, wherein the present respondent has been shown as sole defendant.

2. It is averred in the Plaint that the houses bearing door Nos. 43-b, 48 and 43/24 are the absolute properties of the plaintiff. The defendant without following the existing rules of Municipality has revised the tax for the houses of the plaintiff which paved the way for instituting Original Suit No. 224 of 1994 and the same has been decreed as prayed for. The defendant has not followed the direction given in Original Suit No. 224 of 1994 and again, without following the relevant Rules has revised the house tax relating to door Nos. 43-b, 48 and 43/24 and issued demand notices dated 22.3.1999 and the same are illegal. Under the said circumstances the present Suit has been filed so as to declare that the demand notices issued by the defendant to the plaintiff are illegal and also for passing perpetual injunction restraining the defendant from collecting taxes on the basis of demand notices issued by the defendant.

3. In the written statement filed on the side of the defendant it is stated that the defendant has revised house taxes only by way of following the existing Rules. The plaintiff has not filed any Revision so as to seek remedy. The defendant has revised the house tax only on the basis of value of houses and there is no illegality in revising the tax in question and altogether the present Suit deserves dismissal.

4. On the basis of the divergent pleadings raised on either side, the Trial Court has framed necessary issues and after pondering both the oral and documentary evidence has decreed the Suit as prayed for. Against the judgment and decree passed by the Trial Court, the defendant as appellant has filed Appeal Suit No. 119 of 2003 on the file of the First Appellate Court. The First Appellate Court after hearing both sides and upon reappraising the evidence available on record has allowed the Appeal and set aside the judgment and decree passed by the Trial Court and consequently dismissed the Suit. Against the judgment and decree passed by the First Appellate Court, the present Second Appeal has been filed at the instance of the plaintiff as appellant.

5. At the time of admitting the present Second Appeal, the following substantial questions of law have been formulated for consideration:

(i) Whether the judgment and decree passed by the Lower Appellate Court is liable to be set aside since the same is opposed to well established documentary evidence on record such Exs. B1 to B7 and therefore perverse.

(ii) Whether the Appellate Judge can go beyond pleading, and beyond the documents and can give a finding that opportunity is given to the appellant/plaintiff in tax matter ?

(iii) Whether the assessment order without following the principles laid down under the Act is valid ?

(iv) Whether the Lower Appellate Court''s finding of estoppel against statute is correct when admitted tax is paid under Exs. A8 to show the bona fide of the appellate ?

6. Before contemplating the rival submissions made by either counsel, it would be more useful to look into the following admitted facts:

7. It is an admitted fact that the appellant/plaintiff is the owner of the house bearing door Nos. 43-b, 48 and 43/24. It is also equally an admitted fact that the houses of the plaintiff are well within the jurisdiction of the defendant with regard to imposition of tax. The main gravamen mentioned in the Plaint is that without giving sufficient opportunities and also without following existing Rules, the defendant has revised the taxes and issued demand notices dated 22.3.1999.

8. The main defence taken on the side of the defendant is that the defendant is having unfettered right of revising the tax as per order passed by the Government

and also as per existing rules in the District Municipalities Act and further the defendant has revised the tax in question only after ascertaining the value of the building. The Trial Court has decreed the Suit as prayed for as noted down earlier. But the First Appellate Court has dismissed the Suit.

9. The learned counsel appearing for the appellant/plaintiff has repeatedly contended that the plaintiff is the owner of the houses bearing door Nos. 43-b, 48 and 43/24 and the defendant without giving sufficient opportunity to the plaintiff and without ascertaining the value of the houses has erroneously revised the taxes and on the basis of erroneous Revision, the defendant has given the demand notices dated 22.3.1999 and in order to declare the same as illegal and also for passing perpetual injunction against the defendant from collecting the revised taxes the present Suit has been instituted. The Trial Court after considering the contentions raised on the side of the plaintiff has rightly decreed the Suit. But the First Appellate Court has erroneously dismissed the Suit and therefore, the judgment and decree passed by the First Appellate Court are liable to be interfered with.

10. In order to repudiate the argument advanced by the learned counsel appearing for the appellant/plaintiff, the learned counsel appearing for the respondent/defendant has also equally contended that the defendant after ascertaining the value of the houses of the plaintiff and also as per; the existing procedure of law has revised house taxes and on the basis of Revision made by the defendant, the demand notices dated 22.3.1999 have been issued to the plaintiff and the plaintiff has to exhaust the remedy which is available under the Act and therefore, the present Suit is not legally maintainable and the Trial Court without considering the contention urged on the side of the defendant has erroneously decreed the Suit. But the First Appellate Court after analyzing all the documents filed on either side has rightly dismissed the Suit and therefore, the judgment and decree passed by the First Appellate Court are perfectly correct and the same do not call for any interference.

11. As stated earlier, the appellant/plaintiff is the owner of the houses bearing door Nos. 43-b, 48 and 43/24. The alleged demand notices dated 22.3.1999 have been marked as Exs. A4 to A6. The main gravamen of the appellant/plaintiff is that before issuing Exs. A4 to A6 no opportunity has been given to the appellant/plaintiff. Further the revised tax has not been made on the basis of value of the properties and further no working sheet has been attached with Exs. A4 to A6.

12. The learned counsel appearing for the appellant/plaintiff has drawn the attention of the Court to the following decisions:

(a) The first and foremost decision is reported in Shanmugha Nadar Vs. The Corporation of Madurai, wherein this Court has held that if a levy is based upon market value is not authorized by law and the same can be questioned in Civil

Forum. Further in paragraph-18 it is stated like thus:

18. It was suggested that the plaintiff has straight away come to Court without exhausting his remedies under the Act. I do not find anything in the proviso to Section 495(1) to show that a Suit without exhausting the so-called statutory remedies will be barred. If an assessment does not in substance and in effect comply with the provisions of the Act, then it is no answer to the Suit to set aside the assessment to say that the plaintiff had not filed an Appeal against the assessment.

(b) The second decision is reported in K.R. Abirami v. The Kumbakonam Municipality, rep. by its Executive Authority, the Commissioner, Dr. Murthy Road, Kumbakonam Town, 2008 (1) CTC 791, wherein also this Court has held that if sufficient opportunity has not been given with regard to assessment of tax, the proceeding is liable to be vitiated by way of filing a Civil Suit and further in paragraph-8, it has been specifically stated that Municipality has to give special notice under Rule 9 and pass appropriate orders after giving opportunity to the plaintiff.

(c) The third decision is reported in Sanjai Gupta v. The Commissioner, Corporation of Chennai, Ripon Buildings, Chennai-600 003 and another, 2009 (2) CTC 465, wherein the Division Bench of this Court has held that objection has been filed with regard to Revision of tax. But without deciding objections notice has been issued for payment of property tax is illegal.

13. In the instant case the following vital points have been raised on the side of the appellant/plaintiff. The first and foremost vital point is that the revised tax has not been made in accordance with the provision of Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 1960. It is an everlasting principle of law that tax has to be revised only as per the provision of Section 4 of the said Act and further as per D.O.Lr. No. 60572/R1/98 dated 3.9.1998, the Government of Tamil Nadu has categorically stated that working sheet contain details of property and calculation should also be sent along with special notice. In the instant case as rightly pointed out on the side of the appellant/plaintiff, no working sheet has been annexed with Exs. A4 to A6. In fact this Court has closely perused Exs. A4 to A6, wherein it has been simply stated that the plaintiff should pay the revised tax. Therefore, the mode of calculation of revised tax has not at all been stated in Exs. A4 to A6 and in short working sheet as per the said D.O. letter, has not been annexed with. Therefore, the first contention urged on the side of the appellant/plaintiff is really tenable.

14. The second contention is that the respondent has not followed the Rules. It has already been pointed out that in Exs. A4 to A6 it has been simply stated that the plaintiff should pay the tax amount mentioned therein and no working sheet has been annexed. Therefore, it is pellucid that the defendant has not followed the existing rules and procedure in revising the taxes in question.

15. The learned counsel appearing for the respondent/defendant has drawn the attention of the Court to the decision reported in M.L. Krishnamoorthy (died) and M.K. Sathyamurthy Vs. The Government of Tamilnadu and The Gudiyattam Municipality, wherein the Division Bench of this Court has held that on the face of assessment, proper course for appellant, to seek remedy of Appeal.

16. In the instant case, Exs. A4 to A6 are demand notices. Further in the decision referred to pay the learned counsel appearing for the appellant/plaintiff it has been clinchingly stated that the Civil Suit is maintainable with regard to demand notices. Therefore, it is quite clear that there is no error in instituting the present Suit.

17. It has already been pointed out that Exs. A4 to A6 are not in consonance with existing rules and procedure and in short, Exs. A4 to A6 have not been annexed with working sheet which is basis for revising taxes and therefore, viewing from any angle the plaintiff is entitled to get the relief sought for in the Plaint. The Trial Court after considering all the contentions raised on either side has rightly decreed the Suit. But the First Appellate Court without considering the relevant procedure of law and also without considering the infirmities found on the side of the defendant, has erroneously dismissed the Suit and in view of the foregoing narration of factual as well as legal premise, this Court is of the view that the Judgment and decree passed by the First Appellate Court liable to be interfered with and altogether the present Second Appeal can be allowed and further all the substantial questions of law raised in the present Second Appeal are really having substance. In fine, this Second Appeal is allowed without cost and the Judgment and decree passed in Appeal Suit No. 119 of 2003 by the Principal Sub-Court, Kumbakonam are set aside and the judgment and decree passed in Original Suit No. 3 of 2000 by the Principal District Munsif Court, Kumbakonam are restored. However, the respondent/defendant is at liberty to revise the tax by following existing procedure of law.