

(1968) 08 OHC CK 0001
In the Orissa High Court
Case No : Civil Revision No. 264 of 1966

B. Jagannath Swamy

APPELLANT

Vs

Jeypore Municipality

RESPONDENT

Date of Decision : 16-08-1968

Acts Referred:

Orissa Municipal Act, 1950 — Section 156, 156(1)

Citation : (1968) 34 CLT 1318

Hon'ble Judges : Barman, C.J

Bench : Single Bench

Advocate : Y.S.N. Murty, for the Appellant; P.V. Ramdas, for the Respondent

Final Decision : Dismissed

Judgement

Barman, C.J.—The Defendant stated to be the owner of a house bearing Holding No. 122 in Ward No. 7 of Jeypore town (Koraput District) challenges a decision of the learned lower Appellate Court by which he decreed the suit of the Plaintiff Jeypore Municipality against the Defendant filed on March 31, 1964 for recovery of Rs 510.24 paise from the Defendant as arrear taxes for the years 1961-62, 1962-63 and 1963-64 on the basis that the Defendant owns the said house. The defence, so far as material for the purpose of deciding this civil revision, is that the suit is not maintainable as the Defendant is not an Assessee under the Orissa Municipal Act, 1950. The trial Court dismissed the suit on the finding that the Plaintiff failed to prove that the Defendant was an Assessee under the Municipality. In appeal the learned lower Appellate Court decreed the suit in favour of the Plaintiff Municipality on the finding that there was no specific issue as to whether the Defendant was an Assessee or not; and further that such a plea was not available to the Defendant by reason of Section 156 of the Orissa Municipal Act.

2. Section 156(1) of the Orissa Municipal Act, 1950 is as follows:

No objection shall be taken to any assessment or valuating nor shall the liability

of a person to be assessed or taxed be questioned in any other manner or by any other authority than is provided in this Act.

The Defendant's point is that he is not an Assessee under the Act. In support of his contention he submits that in course of hearing of the suit he filed a separate petition on October 20, 1964 to produce following documents in possession of the Plaintiff Municipality, namely:

- (1) Order of Revision assessment of taxes for the suit house for the suit period.
- (2) Proof of service of demand notices (served copies) for all the quarters of the suit period for the suit house.
- (3) Resolution of the Municipality Council authorising the filing of the suit.

The learned Counsel for the Defendant-Petitioner submits that except the last item, namely the Resolution of the Municipal Council, the Plaintiff had not produced the other two items before the trial Court as recorded in paragraph 6 of the judgment of the learned trial Court.

3. Now, the very fact that the Defendant asked for revision assessment order, presupposes that there was prior assessment of taxes. In any event the Defendant cannot raise his objection to a suit relying on the provisions of Section 156 of the Act as quoted above.

4. The reasoning-with which I agree-on which the learned lower Appellate Court rejected this plea of the Defendant is, in substance, this:

Section 156(1) of that Act expressly ousts the jurisdiction of the Civil Courts to examine the liability of the Defendant to be assessed or taxed under the Act. The Civil Court has jurisdiction only to examine if the provisions of the Act have not been complied with. So, it is only an illegal assessment which can be challenged before a Civil Court. Here the Defendant owning a holding is not disputed and P.W. 1 has proved that the Defendant has been assessed to taxes. Nothing has been shown from the side of the Defendant as to how the assessment is illegal. Therefore, the learned Subordinate Judge is wrong in balding that the Defendant is not assessed to tax. It is proved from the evidence of P.W. 1 that the Defendant has been assessed to tax and he has defaulted payment of the same for the three years 10 question.

In the penultimate Paragraph the learned lower Appellate Court observes as follows:

The learned Subordinate Judge has dismissed the suit on a question which is not covered by the pleadings of the parties. There is no issue as to whether the Defendant is an Assessee or not. It is not the case of the Defendant in his written statement that he is not an Assessee. Hence, the finding of the Court below that the Defendant is not an Assessee cannot be supported.

5. This reasoning on which the learned lower Appellate Court decreed the suit in

favour of the Municipality for arrear taxes is based on the finding of fact that the Defendant is an Assessee with which this Court in revision is not to interfere. Indeed, there is no illegality or irregularity in the decision passed by the learned lower Appellate Court. In this view of the case the decision of the learned lower Appellate Court is upheld. This civil revision (sic) dismissed. In the circumstances of the case, each party shall bear his own costs throughout.