
(1984) 05 CAL CK 0023
In the Calcutta High Court
Case No : S.A. No. 746 of 1975

Hooghly Chinsurah Municipality

APPELLANT

Vs

Napilal Ghose and Others

RESPONDENT

Date of Decision : 02-05-1984

Acts Referred:

Bengal Municipal Act, 1932 — Section 156, 157, 158, 159, 160
Civil Procedure Code, 1908 (CPC) — Section 9

Citation : AIR 1984 Cal 197 : 88 CWN 760

Hon'ble Judges : Sukumar Chakravarty, J

Bench : Single Bench

Advocate : Ranjit Kumar Banerjee and Asoke Kr. Banerjee, for the Appellant;

Final Decision : Allowed

Judgement

Sukumar Chakravarty, J.—This second appeal is directed against the judgment and decree passed by the learned Additional District Judge, Hooghly in Title Appeal No. 262 of 1974, affirming the judgment and decree of dismissal passed by the learned Munsif 1st Court. Hooghly in Title Suit No. 203 of 1971.

2. The Executive Officer of Hooghly-Chinsurah Municipality as plaintiff filed the suit for realisation of arrear of taxes amounting to Rs. 615-75 p. and for a declaration of charge on the defaulting holding. Plaintiff's case in brief was that Rs. 84-37 p. had been assessed as a total tax for each quarter in respect of the disputed holding No. 26/20 Ward No. 14 Mahulla Goaltuli, Chinsurah and defendant No. 1, Nanilal Ghosh was liable to pay the tax for that holding. During the pendency of the suit, the defendant No. 2 came on record claiming interest in the holding by dint of purchase. Despite demands no payment of arrear taxes had been made by the defendants. The plaintiff accordingly filed the suit.

3. The defendants filed separate written statements denying all material allegations of the plaintiff. During trial real contest had been made by defendant No. 2 who came up with legal objections and prayed for dismissal of the suit.

4. The learned Munsif dismissed the suit on the ground that the suit for realisation of the arrear tax for the defaulting holding was not filed in the Court of competent jurisdiction u/s 162-A of the Bengal Municipal Act, 1932 after taking recourse to the procedure as laid down in the relevant provisions of the said Act, and as discussed by the learned Munsif in his judgment. On appeal, the learned District Judge upheld the judgment and decree of dismissal passed by the learned Munsiff by reiterating the ground that before the filing of the suit for the purpose as in the instant case, the Municipality was under legal obligation to adopt the procedure as laid down in Sections 155 to 162 of the Bengal Municipal Act in the matter of realisation of the arrear taxes of the defaulting holding.

5. Being aggrieved, the Municipality concerned has preferred this second appeal on the ground that both the Courts below committed mistake in law in dismissing the suit.

6. This appeal has been heard ex parte as none for the respondents-defendants has appeared to contest the appeal.

7. Mr. Ashoke Kumar Banerji, learned Advocate for the plaintiff-appellant, with his senior Mr. Ranjit Kumar Banerji, while advancing the argument in support of the second appeal, has submitted that the Courts below could not appreciate the implication of the provisions of Sections 155 to 162-A of the Bengal Municipal Act which have not debarred the Municipality to independently approach the Civil Court of competent jurisdiction under the general law of CPC for realisation of arrear taxes of the defaulting holding and for a declaration of charge on the said holding, without taking recourse to the summary remedy procedure as laid down in Sections 156 to 162 of the Bengal Municipal Act for realisation of arrear of taxes of the defaulting holding, as the jurisdiction of the Civil Court has not been ousted in the matter by specific provision in the Bengal Municipal Act. The decision in the case of Raja Jagdish Pratap Sahi Vs. State of Uttar Pradesh, has been relied on in support of their submission. It appears therefrom that a suit was filed by the State of U. P. for recovery of Agricultural Income Tax due from an assessee under the U. P. Agricultural Income Tax Act without taking recourse to the summary remedy as provided in Section 32 of the U. P. Act. It has been held in the aforesaid case that the failure of the assessee to make payment of tax within time on receipt of the notice of demand creates a debt in favour of the State and this debt can be recovered by the State in any of the modes under the general law. The relevant portion of the observation held in the said decision reported in Raja Jagdish Pratap Sahi Vs. State of Uttar Pradesh, is quoted here:--

"As already observed, after an assessment is made upon the assessee quantifying the tax due from him and a demand for the payment thereof is issued within the period specified therein, it creates a debt payable by the assessee in favour of the State. It is well established that once a debt is created, the State has the right to recover it by any of the modes open to it under the general law, unless as a matter of policy only a specific mode to the exclusion of any other is prescribed by the law".

Section 9 of the CPC provides that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

8. Let us see whether the relevant sections out of the Sections 155 to 162-A of the Bengal Municipal Act have barred the jurisdiction of the Civil Court to entertain the suit for realisation of arrear tax in respect of the defaulting holding and for declaration of charge on that holding. Section 155 of the Bengal Municipal Act enjoins that as soon as a tax is due, the commissioners shall cause to be presented a bill to the person liable to pay such due; and if the said amount is not paid within 30 days from date of the presentation of the bill, a notice of demand shall be served on the person liable to make such payment. Section 156 provides that if any such person does not within thirty days from the date of receipt of such demand notice, pay the sum due or show to the commissioners such sufficient cause for not paying the same, the amount of arrear due along with interest and cost may at any time be levied by distress and sale of any movable property belonging to the defaulter excepting ploughs, cattle and other implement of agriculture. Section 162 empowers the commissioners to apply certificate procedure under the Bengal Public Demands Recovery Act. Section 162-A provides that in the event of failure to recover the whole or any part of the sum due by the certificate as prescribed in Section 162 the commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

9. Section 156 of Bengal Municipal Act does not say that the amount due along with interest and cost shall have to be recovered by only mode of levy by distress and sale of movable property belonging to the defaulters. By using the words "may at any time levied by distress and sale of any movable property belonging to the defaulter" in Section 156, the option of adopting the summary remedy as laid down in Section 156 has been given to the commissioners of the Municipality. If however, the summary remedy as provided in Section 156 is taken recourse to, then the other summary procedure in the form of certificate under the Bengal Public Demands Recovery Act will have to be adopted after the defaulter has been proceeded against unsuccessfully or with partial success u/s 156. Even in such cases also, Section 162-A of the Bengal Municipal Act has empowered the commissioners of the Municipality to sue the person in the Civil Court in respect of the claim for which summary remedy including certificate procedure as provided in Section 162 has been started in the event of failure to recover the whole or any part of the sum due by certificate as prescribed in Section 162. In other words, if the summary remedy as provided in Section 156 is started in respect of any arrear tax against the person liable to pay the same, then the commissioners of Municipality would have to exhaust the summary remedy procedure including the certificate procedure under the Bengal Public Demands Recovery Act, before coming to the Civil Court for recovery of that amount of arrear tax or any part thereof remaining due;

10. u/s 167 of the Bengal Municipal Act, the sum due on account of any Municipal rate from any person in respect of any holding has been made first charge upon the said holding. The commissioners of the Municipality will have to elect whether they will approach the Civil Court first under the general law as provided in CPC without adopting the summary remedy, as prescribed in the Bengal Municipal Act for recovery of the arrear tax, or they could take recourse to the summary remedy procedure as provided in Sections 156 to 162 of the said Act, and once the summary remedy procedure is adopted, then the said summary remedy procedure including the certificate procedure will have to be exhausted before coming to the Civil Court for recovery of the claim or any part thereof under the summary remedy procedure.

11. Section 162-A has made the institution of civil suit conditional upon the compliance of the summary remedy procedure including the certificate procedure in respect of the arrear tax for which the summary remedy procedure as provided in Sections 156 to 162 has already been started, but it has not made the institution of civil suit conditional upon the compliance of the summary procedure as provided in Sections 156 to 162 where the Commissioners elect to file the suit under general law for recovery of the arrear tax without taking recourse to the summary remedy procedure.

12. Both the Courts below therefore committed mistake in law in dismissing the suit on the ground of maintainability alone by holding that the Municipality shall have to try to recover the arrear tax by adopting the summary remedy procedure as prescribed in the Bengal Municipal Act, before coming to the Civil Court. Both the Courts below did not go into the merit of the suit and did not decide the suit on issues NOS. 3 to 6 as framed by the trial Court. In the circumstances, there is no other alternative but to send back the suit on remand for retrial of the suit according to law on giving decision with regard to the issues which were not decided by the Courts below.

13. In the result, this second appeal is allowed ex parte. The judgment and decree of dismissal of the suit passed by both the Courts below are set aside and the suit is sent back on remand for retrial in the light of the observations and directions as given in the judgment. I make no order as to costs.