
(1965) 11 MAD CK 0004
In the Madras High Court
Case No : S. A. No. 768 of 1962

N. Sankaranayana Moopanar

APPELLANT

Vs

Tirunelveli Municipality and others

RESPONDENT

Date of Decision : 01-11-1965

Acts Referred:

Citation : (1965) 11 MAD CK 0004

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : V. Ramaswamy and K. Venkataswamy, for the Appellant; A. Alagiriswamy and K. Gopalaswamy, for the Respondent

Final Decision : Allowed

Judgement

Kailasam, J.—The first defendant is the appellant in this second appeal. The plaintiff, Tirunelveli Municipality through its Commissioner, filed

a suit for the recovery of a sum of Rs. 688-90 on the ground that the first defendant, the managing trustee of Sakkaravinayagar Koil at Pettai,

failed to pay the assessment in spite of written demand by the Municipality. The defendants, who are the trustees of the said temple, raised various

contentions resisting the suit, one of such contentions being that the special notice for the enhancement of the tax was not served on the defendants.

Both the Courts found that special notice was served on the defendants and decreed the suit as prayed for. In this second appeal the learned

Counsel for the appellant submitted that even accepting the evidence of the bill collector, the special notice as required under S. 331 of the District

Municipalities Act has not been served. The facts that are found and which are not disputed are that the seventh defendant is one of the trustees

and the notice was served on the daughter of the seventh defendant. Under S. 331 (2) when a person is an owner or occupier of any building or land, it shall not be necessary to name the owner or occupier in the document, and in the case of joint owners and occupiers it shall be sufficient to serve it on, or send it to, one of such owners or occupiers. According to the subsection, in the case of joint owners it is sufficient to serve the notice on one of such owners or occupiers. It is not disputed that if valid service was effected on the seventh defendant, one of the trustees, the requirements of S. 331 (2) would have been complied with. In this case, the notice was not served on the seventh defendant, the trustee, but only on the daughter of the seventh defendant. On behalf of the Municipality it was contended that under S. 331 (1) (b), if the person on whom notice is to be served is not found, service can be effected by leaving the document at his last known place of abode or business or by giving or tendering the same to some adult member or servant of his family. Service on one of the owners under Sub-S. (2) can be effected in the manner prescribed under S. 331 (1). An effective service as already stated, can be made by tendering to some adult member, if the person, on whom notice is sought to be served, is not to be found. The effect of Ss. 331 (2) and 331 (1) (b) will be that, if the requirements under S. 331 (1) (b) are complied with, it will be an effective notice against all the joint owners or occupiers. It was pointed out by the learned Counsel for the appellant that there is nothing in evidence to show that the seventh defendant, on whom notice was sought to be served, was not found in the house, and therefore notice was given to the seventh defendant's daughter, who is an adult member of his family. Before taking advantage of the provisions of S. 331 (1) (b), there must be evidence to show that the person, who was sought to be served, was not to be found and therefore notice was served on an adult member. It is admitted that there is no evidence in this case that when the Bill Collector went to his house to serve the notice on the seventh defendant, he was not to be found. The requirements of S. 331 (1)(b) therefore, have not been complied with and the notice will be ineffective. In the result the contention of the learned Counsel for the appellant that there was no service according to law has got to be upheld. The appeal is allowed with costs throughout.