
(2009) 08 MAD CK 0349
In the Madras High Court
Case No : S.A. No. 256 of 2004

R. Rajendran

APPELLANT

Vs

Thirumangalam Municipality

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Citation : (2009) 08 MAD CK 0349

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; No appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Mala, J.—This Second Appeal has been filed against the judgment and decree made in A.S. No. 201 of 2003, dated 17.03.2004, on the file of the Principal Subordinate Judge, Madurai confirming the judgement and decree made in O.S. No. 195 of 2002, dated 14.07.2003, on the file of the District Munsif, Thirumangalam.

2. The gist and essence of the averments in the plaint is as follows:

The plaintiff is the owner of the suit property. He applied to the defendant/ Municipality for getting drinking water tap connection by his application, dated 30.04.2007. The plaintiff paid Rs. 1/- through chalan towards the application form fee and also a sum of Rs. 10/- for registering his name for water connection. Subsequently, the plaintiff was directed to pay a sum of Rs. 2000/-. Accordingly, he deposited the said amount on 19.01.1998. Thereafter, the plaintiff got the drinking water connection on 30.01.1998 after supplying all the materials as noted in the receipt No. 182 and 184. The plaintiff also paid a sum of Rs. 300/- towards labour charges to the defendant Municipality. The plaintiff was given the drinking water tap connection. Then, the plaintiff was shocked to receive a letter from the defendant Municipality in R.O.C. No. 3245/2000, dated 12.09.2000, directing the plaintiff to pay a sum of Rs. 2000/- within a week for

getting the drinking water tap connection. Therefore, the plaintiff met the Commissioner of the defendant Municipality and after a long struggle, on the first week of September 2000 showed all the documents to the defendant Municipality and also gave a letter on 13.09.2000 explaining the same. The plaintiff was again shocked and surprised to receive another communication from the defendant in R.O.C. No. 858/2001/E1, intimating him that he has obtained drinking water connection illegally and hence he was directed to pay a sum of Rs. 6705/- within ten days to regularise his water tap connection. Now, the plaintiff was afraid that the defendant may disconnect his drinking water connection at any time. On 30.06.2002 the defendant's officials came to the plaintiff's house to disconnect the drinking water tap connection, but after verifying the records of the plaintiff, left the place. Hence the plaintiff, having no other alternative, constrained to file a suit for declaration that the notice issued by the defendant in R.O.C. No. 858/2001-E1, dated 21.6.2002 is illegal, null and void and enforceable and for consequential relief of permanent injunction restraining the defendant, his men and agents from disconnecting the drinking water tap connection of the plaintiff and pray for a decree as prayed for.

3. The gist and essence of the averments in the written Statement is as follows:

The plaintiff is the owner of the suit property. The house tax for the suit property stands in the name of the plaintiff. But, it is not correct to say that the defendant has no right to send the notice in ROC. No. 858/2001-E1, dated 21.06.2002. It is submitted that the plaintiff arranged for the drinking water tap connection in an unauthorised manner. It is seen from the fact that the plaintiff did not pay any water tax consumption charges. Therefore, the defendant is well within their right to send the notice to the plaintiff asking him to regularise the water tap connection installed in an unauthorised manner by paying the deposit of Rs. 3000/- and penalty of Rs. 3000/- and estimate charges of Rs. 705/-. The defendant had sent a notice as per the Government Order No. 55, dated 07.05.2002. If the plaintiff does not pay the amount as required in the notice, the defendant is within the power to disconnect the water tap connection. The suit filed by the plaintiff is not maintainable either in law or on facts. There is no cause of action for filing a suit. Hence, he prayed for the dismissal of the suit.

4. The learned District Munsif, Thirumangalam, after considering the averments both in the plaint and written statement framed two issues for consideration and after considering the oral and documentary evidence in P.W.1, D.W.1, Ex.A1 to Ex.A7 and Ex.B1, dismissed the suit, stating that the plaintiff has got the drinking water tap connection illegally and hence he is not entitled to any relief sought for in the plaint. As against the same, the plaintiff preferred an appeal in A.S. No. 201 of 2003, before the Principal subordinate Judge, Madurai. The learned Principal Subordinate Judge, Madurai, after considering the arguments of both sides framed one point for consideration and dismissed the appeal and confirmed the judgment and decree of the trial court. Aggrieved by the same, the plaintiff has preferred the present Second Appeal.

5. This Court after considering the entire material records, admitted the Second Appeal, on the following substantial questions of law:

1. Is the defendant justified in demanding payment of additional amount from the plaintiff for regularisation of the tap connection, when irregularity in that tap connection is not established?

6. The appellant as plaintiff filed a suit for declaration that the notice issued by the defendant in R.O.C. No. 858/2001-E1, dated 21.06.2002 is illegal, null and void and enforceable and for consequential relief of permanent injunction restraining the defendant, his men and agents from disconnecting the drinking water tap connection of the plaintiff. The learned Counsel for the appellant submits that the plaintiff has got the water tap connection legally. But the respondent/defendant raised the contention that even though the appellant herein has applied for drinking water tap connection, but, illegally got the water tap connection without following the procedures of the defendant Municipality. Hence, as per Government Order mentioned under Ex.B1, 167 persons were obtained drinking water connection illegally and hence they are liable to deposit additional amount, penalty and estimate charges. In pursuance of that only Ex.A7 has been issued and prayed for the dismissal of the suit.

7. The trial court after considering the oral and documentary evidence dismissed the suit stating that the appellant herein failed to prove that the plaintiff has obtained the drinking water tap connection legally. Against that, the plaintiff preferred an appeal and the appeal was also dismissed and against that the plaintiff/appellant has preferred the present Second Appeal.

8. The learned Counsel for the appellant would contend that as per Ex.A1, he is the owner of the suit property and as per Ex.A2, he paid Rs. 1/- in the Treasury for applying to water tap connection and he paid another sum of Rs. 10/- as per Ex.A3 on the same date for registering his name for drinking water tap connection. In pursuance of that, he received another communication directing the appellant to deposit another sum of Rs. 2000/- and as per Ex.A4, the plaintiff paid the said amount. On 12.06.2000, he received another letter from the respondent demanding to deposit Rs. 2000/-. For Ex.A5, the plaintiff has given a reply to the respondent under Ex.A6. But, the learned Counsel for the appellant would contend that he deposited the amount as required by the respondent Municipality and then only drinking water tap connection was given to him and hence issuance of Ex.A5 to the plaintiff/appellant is not legally correct. Hence, for replying the same, he issued a reply letter under Ex.A6. Then only, the defendant Municipality issued Ex.A7, letter which is a false one.

9. While considering the arguments of both sides and a perusal of the entire material records, it is seen that the plaintiff/respondent has applied for drinking water tap connection in the office of the defendant Municipality and he paid Rs. 1 towards application fees, Rs. 10/- for registration and also Rs. 2000/- towards the deposit amount. But, he has not produced any single document to show that

he has obtained drinking water tap connection and receipts towards water consumption charges from the date of giving water tap connection till the date of issuance of Ex.A5 and Ex.A7. While perusing the document marked under Ex.A2, on the backside of it, some writing has been seen, but, there is no evidence to show that it has been written by the staff members of the defendant/respondent/Municipality. If really, the respondent Municipality has given, they have issued water tax demand notice one in six months. But the plaintiff/appellant herein has not filed any single piece of document showing that he paid water consumption charges to the defendant Municipality.

10. Even though in his plaint, the plaintiff has stated that he got the drinking water tap connection, but, he has not mentioned when the water tap connection was given. But while perusing the document filed by him, it is seen that he has failed to follow the procedures. But if really, he got the water tap connection in the year 1997, he can very-well file the said document before the court below. Even though he has filed Ex.A4 receipt for payment of Rs. 2000/- in Treasury and a perusal of the same reveals that it was paid on 19.01.1998. So, the plaintiff/appellant herein failed to prove that he has obtained regular water tap connection from the respondent Municipality. In the above circumstances, I am of the opinion that the appellant herein has got the drinking water tap connection in an unauthorised manner.

11. As per Government Order in Ex.B1, it was stated that to collect penalty and additional deposit from the person who got drinking water tap connection in an unauthorised manner. In pursuance of Ex.B1 only, Ex.A7-notice has been issued to the appellant/plaintiff. In the above circumstances, there is no evidence produced by the plaintiff/appellant before the trial court and the first appellate court to show that when did the appellant herein has got the water tap connection and documents relating to the payment of water consumption charges to the defendant/respondent Municipality.

12. Considering all the above circumstances, this Court is of the opinion the trial court and the first appellate court has considered all the aspects in a proper manner and come to a correct conclusion and refused to grant the relief sought for by the plaintiff/appellant herein. Hence, the defendant is justified in demanding the appellant to deposit additional amount for getting drinking water tap connection and also the penalty and estimate charges from the appellant herein for regularising the drinking water tap connection. Moreover, no substantial question of law arise in the second appeal. The first appellate court is the last fact finding court; the first appellate court has considered all the documents and oral evidence and come to the correct conclusion. There is no perverse finding. Hence, I am not inclined to interfere with the findings of the first appellate court.

13. For the foregoing reasons, the Second Appeal is liable to be dismissed and the judgment and decree of the trial court as well as the first appellate court are liable to be confirmed.

14. In fine, the Second Appeal is dismissed and the judgement and decree of the trial court and the first appellate court is hereby confirmed. No costs.