SUPREME COURT OF INDIA

Nagarpalika Thakurdwara

Vs.

Khalil Ahmed & Ors.

C.A.No.9822 of 2016

(Anil R.Dave and L.Nageswara Rao,JJ.,)

28.09.2016

JUDGMENT

Anil R.Dave,J.,

SLP. (Civil)No.16318 of 2012

1. Leave granted.

2. Being aggrieved by the Judgment dated 21.9.2011 delivered by the High Court of Judicature at Allahabad in Second Appeal No.781 of 2011, the appellant Nagar Palika has approached this Court by way of this appeal.

3. The facts giving rise to the present litigation in a nutshell are as under :

> The respondents, who claim to be residing outside the municipal limits of Nagar Palika Thakurdwara, District Moradabad, filed a Civil Suit being OS No.13 of 1994 against the appellant in the court of Civil Judge (Junior Division), Thakurdwara, praying for the following reliefs :
>
> "(a) That the defendant no.1 be restrained by decree of permanent injunction that they remain restrained from recovery of alleged house tax of Rs.6760/- regarding crusher in question, present building no.319 and calendaring factory building no.320 and shops in question, building no.321 to 332 respectively which are outside the limits of municipality and situated in village Fatehullah Ganj in property owned by Plaintiff nos.2 and 3 situated in village Fatehullah Ganj and from recovery of Rs.4,246.07 amount described in the recovery certificate or more by itself or its agent defendant no.2 or by any other medium or be restrained from imposing any house tax till the pronouncement of the properties in question to be within the limits of municipality by the Government in either years.

(b) That the defendant no.1 be ordered to give the cost of the present suit to the plaintiff(s).

(c) That the relief which is fit in the opinion of the Hon'ble Court in favour of the plaintiff(s) be granted."

Thus, the case of the respondents was that their premises were not within the municipal limits of the appellant Nagar Palika and therefore, the Nagar Palika had no right to levy any tax on the said properties of the respondents and therefore, the appellant be restrained from recovering tax in respect of the said properties from the respondents. The respondents had also impliedly prayed for a declaration to the effect that they were not liable to pay any tax to the appellant Nagar Palika under the provisions of the Uttar Pradesh Municipalities Act, 1916 (hereinafter referred to as 'the Act').

4. Written Statement was filed by the appellant stating that the premises of the respondents were very much within the municipal limits of the Nagar Palika and the said fact was also known to the respondents as respondent no.1 had also contested an election for being a President of the appellant Nagar Palika. Moreover, it was also the case of the appellant that the suit was not maintainable in view of the provisions of Sections 143 and 160 of the Act.

5. The said suit was dismissed and therefore, the respondents preferred first appeal, being Civil Appeal No.30 of 2008, before the Court of Additional District Judge, Moradabad, which was allowed by a judgment dated 19.7.2011.

6. Being aggrieved by the aforesaid judgment dated 19.7.2011, the appellant filed Second Appeal No.781 of 2011, which has been dismissed by the High Court by virtue of impugned judgment and therefore, this appeal has been filed by the appellant.

7. The short reason for which the appeal filed by the appellant has been dismissed by the High Court is that the claim in the second appeal was less than Rs.25,000/- and by virtue of the provisions of Section 102 of the Code of Civil Procedure, 1908, no second appeal would lie from any decree when the subject matter of the original suit is for recovery of money not exceeding Rs.25,000/-.

8. The learned counsel appearing for the appellant submitted that the High Court committed an error by not considering the fact that the suit had been filed seeking permanent injunction, praying that the appellant Nagar Palika should be restrained from recovering any tax under the Act from the respondents as the properties belonging to the respondents were situated beyond the municipal limits of the appellant Nagar Palika.

9. The learned counsel further submitted that the High Court only considered the amount of tax which was payable at the relevant time, which was only Rs.11,006.07, but ignored the fact that the suit was also for a declaration to the effect that the properties of the respondents were not within the municipal limits of the Nagar Palika and therefore, no tax could have been levied thereon by the appellant. Thus, the suit was not only for recovery of money, but

was also for a declaration and permanent injunction. Moreover, it was also submitted that the suit itself was not maintainable in view of the provisions of Sections 140 and 163 of the Act and therefore, the appeal could not have been allowed by the first appellate court.

10. On the other hand, the learned counsel appearing for the respondents submitted that the impugned judgment is just, legal and proper for the reason that by virtue of the second appeal filed by the appellant, the appellant wanted to recover only a sum of Rs.11,006.07 by way of tax from the respondents. The learned counsel, therefore, submitted that the second appeal deserved to be dismissed.

11. Upon hearing the learned counsel and looking at the facts of the case and in the light of the legal provisions, we are of the view that the High Court ought not to have dismissed the second appeal.

12. Section 102 of the Code of Civil Procedure, 1908, reads as under :

> "102. No second appeal in certain cases. – No second appeal shall lie from any decree, when the subject matter of the original suit is for recovery of money not exceeding twenty-five thousand rupees".

13. In the instant case, the suit was not only for recovery of money, but it was for a declaration and permanent injunction. Moreover, the issue with regard to location of the properties in question had to be decided. It was to be ascertained whether the properties were situated within the municipal limits of the Nagar Palika and if so, whether the appellant was entitled to levy tax thereon under the provisions of the Act. If the properties were not within the municipal limits of the appellant Nagar Palika, the appellant could have been permanently restrained from recovering any tax under the Act in respect of the properties in question. Thus, several other issues were also to be decided in the said suit. It is also pertinent to note that the maintainability of the suit was also challenged by the appellant in view of the provisions of the Act.

14. The purpose behind enactment of Section 102 of the CPC is to reduce the quantum of litigation so that courts may not have to waste time where the stakes are very meagre and not of much consequence. In the instant case, though apparently the amount which was sought to be recovered was Rs.11,006.07, looking at the prayer made in the plaint, the consequences of the final outcome of the litigation would be far-reaching.

15. So as to avail advantage of the provisions of Section 102 of the CPC, the subject matter of the original suit should be only recovery of money and that too, not exceeding Rs.25,000/-. If the subject matter of the suit is anything other than recovery of money or something more than recovery of money, provisions of Section 102 of the CPC cannot be invoked.

16. In the instant case, the original suit was not only for recovery of money, but was also for a declaration and permanent injunction. In view of the aforestated fact, the provisions of Section 102 of the CPC could not have been applied.

17. In the circumstances, we set aside the impugned judgment and remit the matter to the High Court so that the Second Appeal can be decided afresh after hearing the parties concerned.

18. As the suit was filed in the year 1994 and possibly no tax might have been recovered by the appellant till now, we feel that the second appeal should be decided at an early date. The parties to the litigation shall appear before the High Court on 17.10.2016 and the High Court is requested to fix the date for final hearing of the second appeal so that the appeal can be finally decided preferably within six months from the date of receipt of a copy of this judgment by the High Court.

19. The appeal is, accordingly, disposed of as allowed with no order as to costs.