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Court : Chennai

Decided On : Aug-14-1984

Reported in : (1985)2MLJ6

Appellant : Sethurama Udayar

Respondent : Chidambaram Municipality, Rep. by Its Executive Authority Commissioner

Judgement :

G. Maheswaran, J.

1. The plaintiff, Chidambaram Municipality, claimed arrears of property tax from the defendant due for the period 1970-71 second half to 1975-76 second half, amounting to Rs. 179.90. The defence was that the claim for arrears of tax for more than 3 years from the date of plaint, is barred by limitation. The trial Court in a laconic judgment, decreed the suit on the ground that the defendant has not shown as to how the claim for more than three years is barred by limitation. On appeal, the Appellate Judge relied on a decision in Shidrao Narayan Rao Gumaste Patil v. Municipality of Athani : AIR1943 Bom21 and came to the conclusion that a claim to enforce payment of money, which is a charge on an immovable property, not only by an agreement between the parties, but also by operation of law, will be

governed by Article 132 (corresponding to Article 62 of the New Act) of the Limitation Act and that therefore, the period of limitation for recovery of the amount is 12 years and the suit is well within time and accordingly he dismissed the appeal, confirming the judgment and decree of the trial Court.

2. The short question in this second appeal is, whether the suit for recovery of property tax arrears for the period 1970-71 second half to the period upto 13.10.1973 is barred by limitation. The plaint was presented in Court on 14.10.1976. Under Section 85 of the Tamil Nadu District Municipalities Act, 1920, the property tax on buildings and lands shall, subject to the prior payment of land revenue, if any, due to the Government thereon, be a first charge upon the said buildings and lands. Under Article 62 of the Limitation Act, 12 years' time is prescribed for enforcing a charge on the immovable property, the period being calculated from the time 'when the money sued for becomes due'. If Article 82 applies, the suit will be well within time. But what the court below has overlooked is that Section 345 of the District Municipalities Act prescribes only a period of three years for recovering any sum due to the Municipal Council under the Act. Section 345 of the Act runs thus:

345. No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the municipal council under this Act after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted, or prosecution might first have been commenced, as the case may be, in respect of such sum.

Arrears of property tax is undoubtedly a 'sum due to the Municipal Council payable under the Act'; under Section 345 of the District Municipalities Act, a special provision of limitation is fixed and this is made applicable to the distraint proceedings, institution of suit, and to prosecution. When a special enactment prescribes a period of limitation, the provisions of the general law, viz., the Limitation Act, will not be applicable. In that view of the matter, the court below is wrong in holding that Article 62 of the Limitation Act will govern the present case.

In the result, the appeal is allowed in part, the decree and judgment of the courts below are modified and the suit will stand decreed for the tax arrears due for the

period commencing from 14.10.1973 to the second half of 1975-76. In other respects, the appeal will stand dismissed. There will be no order as to costs.

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