Received on : 03/03/2016
Registered on : 03/03/2016
Decided on : 28/10/2024
Duration : Y. M. D.

In the Court of 11th Additional District Judge at Surat.

Regular Civil Appeal No-23/2016

Exhibit- 38.

Appellant: **Shree Hareshbhai @ Bharatbhai Babubhai Daruwala**
Address:. 3/4225, Kotsafil Road, Surat
Through general power of attorney holder
Rameshchandra Natwarlal Kazi
Aged 65 years, Occupation : business, Service
Residing at Vishwakarma Temple,
Vishwakarma Society, Majura Gate, Surat.

V/s.

Respondent: **1. Surat Municipal Corporation**
2. Legal heir of Late Mr. Mayashankar Madhavji Purohit
2.1 Arun Mayashankar Purohit
2.2 Nilesh Mayashankar Purohit
2.3 Kokilaben Mayashankar Purohit
3. Rajanikant D. Modi
Partner of Athwa General Stores

Address:. Daruwala Building, Athwa general Stores, Near Chowpati, Athwalines.

4. **Bipinchandra Dhirajlal Modi**

   Address:. Daruwala Building, Athwa general Stores, Near Chowpati, Athwalines.

5. **Prafulchandra Dhirajlal Modi**

   Address:. Daruwala Building, Athwa general Stores, Near Chowpati, Athwalines.

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Learned Adv. for the Appellant :- V S Kaji
Learned Advocate for the Respondent No.1 :- M. J. Chapadia
Learned Adv. for the Respondent No. 2-5 :- V. C. Gandhi

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Appeal under Section 411 of Gujarat Municipal Corporation Act, 1949

JUDGMENT

(1) This Appeal under Section 411 of the Gujarat Provincial Municipal Corporation Act, 1949 is at the instance of the original respondent and is directed against the Judgment and Decree dated 31.12.2015 passed by the then 15th Additional Senior Civil Judge, Surat in Municipal Tax Appeal No. 24 of 2003 filed under Section 406 of the Gujarat Provincial Municipal Corporation Act.

(1.1) The Appellant herein is the original appellant and the Respondents herein are the original respondents in Municipal Tax Appeal No. 24 of 2003. They are hereinafter referred to as their original position in the Suit.

(2) The facts giving rise to this appeal is that the property owned by the appellant is situated at ward no. 13-A, Nondh No.4/8/D, Old Revenue Survey No.13/1, Shop No.B-5, Tenament No. 13A-05-0021-0-014. The appellant has submitted that the appellants have paid up the tax bills in respect to the assessment carried out on 1997, which was assessed by the respondents. This retrospective effect cannot be given as per the rules and regulations embodied in the Taxation laws. The notice to that effect was given by the respondent. In the said notice the appellate property is shown as being occupied by the tenants i.e. respondent No.3. There is no contract between appellant and respondent No.3. Appellant only knows respondent No.2 and hence, this respondent No.3 is under illegal possession of the appellant property. The respondents have wrongly assessed said appellant's property which is shown in possession of the tenants and the property is described as shops. The annual net taxable income is shown as Rs. 8230/-. The tax levieved on property is arbitrary. Above and over, these premises are described as commercial premises and the bill as shown above is illegal, arbitrary and against the tax laws and is required to be set aside.

(3) The respondent no. 1 Surat Municipal Corporation has submitted his reply vide Exh. 12 and the respondent no. 3 to 5 have submitted their reply vide Exh. 16 and 25 respectively. The parties advances their respective submissions. After appreciating the argument advanced by both parties, the Ld. Trial Court has dismissed the Municipal Tax Appeal filed by the appellant.

(4) Being aggrieved and dissatisfied with the said Judgment and Decree of the Ld. Trial Court, the original appellant has preferred the present Appeal.

<u>Submission on behalf of Appellant</u>.

(5) The Ld. Advocate for the appellant has submitted that the landlord is not responsible for paying tax at additional rate in case of sub-tenancy without authority and transfer of possession to a stranger. The Ld. Trial Court has erred in understanding the term 'occupier' and 'owner' as well as 'annual letting value' in its real perspective. It is further submitted that the alleged order of assessment has been made on 2003 with retrospective effect of 1997 which cannot be given as per settled law and it can be given effect thereto from the concerned official year. It is further submitted that the alleged issued bill of tax are also not in accordance with the settled law of levy of tax. Hence prayed for allowing an appeal.

Submission on behalf of Respondent.

(6) The Ld. Advocate for the respondent no. 1 has submitted written argument vide Exh. 31. He further submitted that the Ld. Trial Court has rightly dismissed the appeal filed by the appellant which does not require any interference. Hence, prayed for dismissal of the present appeal.

(6.1) The Ld. Advocate for the respondents no-2 to 5 have submitted their written argument. He further submitted that they are agree of the argument of the appellant to the effect that there cannot be retrospective effect given in the alleged assessment and issuance of the bill. He further submitted that the appellant had failed to prove that there is a sub-tenancy. He further submitted that the property is the commercial tenancy property and the respondents are doing business in it as partners of firm. Hence, prayed for dismissal of appeal.

(7) Considering the materials on record and having heard the Ld. Advocates for both the parties, the following points arises for determination of this Appeal;

Sr. No.	POINTS
1.	Whether, in facts and circumstances of the case, the Ld. Trial Court has committed any error of law as well as facts in dismissing the appeal of the appellant?
2.	What order ?

(8) My decision upon such points are as under;

Issues	Findings
1.	In Negative.
2.	As per Final order.

Reasons for the Decision

(9) Considering the material on record and argument advanced on behalf of both the parties, it appears that there is dispute between landlord and the tenant regarding creation of sub-tenancy over the alleged premises. The alleged property is the commercial property rented to the tenant. As per the provision of Section 139 of GPMC Act the lesser, superior lesser or the person in whom the right to let the premises waste if the property is unlet respectively is responsible for property tax. As per the provision of Section 139A of GPMC Act where the property is let or sub-let and their rateable value exceeds the amount of rent payable in respect thereof then the person shall be entitled to receive from his tenant the difference between amount of property tax levied from him. The issue of sub-tenancy has to be determined by the competent court and in the absence of such determination, the argument of the Ld. Advocate for the appellant to that effect cannot be accepted. The Ld. Trial Court has also appreciated the said asepct in its real perspective and come to the conclusion. The Ld. Trial Court has acted as an appellate authority as per Section 406 of G.P.M.C Act of 1949 and this is an appeal to Civil appellate authority which may be said to be second appeal against the order passed under 406 of G.P.M.C Act of 1949. The Ld. Trail Court has also held by appreciating all such evidence that there is no reason to interfere in appeal. This Court is agree with the reasons recorded by Ld. Trail Court in arriving at its conclusion.

14. So in view of the aforesaid discussion and reasons, this court is of the considered view that the Ld. Trial Court has not committed any error of law as well as fact in dismissing the appeal. Hence my finding upon point no-1 is in negative. I hereby pass the following final order on issue No-2 in the interest of justice.

-:: FINAL ORDER ::-

The present appeal is hereby ordered to be dismissed.

The Judgment and Decree dated 31.12.2015 passed by the then 15th Additional Senior Civil Judge, Surat in Municipal Tax Appeal No. 24 of 2003 filed under Section 406 of the GPMC Act is hereby confirmed.

The appellant has to pay the cost of this appeal to the respondents and has to bear the cost of his own.

Decree be drawn accordingly.

The record and proceeding be sent back forthwith to the Ld. Trial Court along with the certified copy of the present judgment.

Pronounced and signed in an open court on October 28th, 2024.

Date: 28/10/2024
Place: Surat

(Amitkumar Narendrabhai Dave)
11th Addl. District Judge
Surat
Judge Code: GJ 00807