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decision appealed against must be supported under section 42 of the Specific Relief Act. It provides that no declaration shall be made when the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so. The arrears of malikana payable to the fifth Raja and already paid to the first defendant, being monies had and received by the one for the use of the others, their recovery was the further relief which the appellant was at liberty to claim and which he omitted to claim or abandon. The object of the proviso to section 42 is to avoid multiplicity of suits and to prevent a person getting a declaration of right in one suit and immediately after, the remedy already available in another. On this ground the appeal must fail and be dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

1889. August 7. Sept. 3.

MUNICIPAL COUNCIL OF TUTICORIN (DEFENDANTS), PETITIONERS,

v.

SOUTH INDIAN RAILWAY COMPANY (PLAINTIFFS), RESPONDENTS.*

Municipal tax—District Municipalities Act—Act IV of 1884 (*Madras*), *ss.* 49, 50, 53, 101—*Wrongful assessment of profession tax—Jurisdiction of Small Cause Court—Provincial Small Cause Courts Act—Act IX of* 1887, *sch. II, paragraph* 1—*Order of a Local Government.*

The Municipality at Tuticorin demanded Rs. 50 as profession tax from the South Indian Railway Company which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court:

Held, (1) the Court had jurisdiction to hear and determine the suit;

(2) the Municipality at Tuticorin had no right to levy the tax on the Railway Company and the decree directing the amount levied to be refunded was correct.

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* Civil Revision Petition No. 173 of 1888.

PETITION under Act IX of 1887, s. 25, praying the High Court to revise the decree of S. Krishnasami Ayyar, District Munsif of Tuticorin, in small cause suit No. 1041 of 1887.

Subramanya Ayyar for petitioners.

Burton for respondents.

The facts of this case and the arguments adduced on this petition appear sufficiently for the purpose of this report from the following

JUDGMENT:—The petitioners in this case are the Municipal Council at Tuticorin and the counter-petitioners are the South Indian Railway Company. The question for decision is whether the Railway Company who exercise their profession or carry on their business as such Company as well within the limits of the Municipality at Tuticorin as within the limits of the Municipality at Negapatam are liable under Act IV of 1884 (Madras), to pay the profession tax to both Municipalities. The facts upon which the question arises are shortly these. In 1884, when Act IV of 1884 was passed, Negapatam was the head-quarters in India of the South Indian Railway Company. The Company's profession tax was paid for that and the subsequent year to the Negapatam Municipality. In April 1885, the Company's head-quarters were transferred from Negapatam to Trichinopoly, but the Negapatam Municipality continued to demand and the Railway Company continued to pay them the profession tax due for 1886-87 and for the first half of 1887-88. On 6th August 1887, the Municipality at Tuticorin gave notice to the Railway Company that Rs. 50 was payable to that body as the Company's profession tax for the first half of the year 1887-88. This demand was made after the Company had paid Rs. 50 as their profession tax to the Municipality of Negapatam for the same half-year. On the 31st August 1887, the Railway Company paid Rs. 50 to the Municipality at Tuticorin under protest and preferred an appeal against the assessment on the ground that the profession tax had been previously paid to the Negapatam Municipality. Their appeal was rejected and they then sued for a refund on the Small Cause Side of the District Munsif's Court at Tuticorin. The Tuticorin Municipality resisted the claim on three grounds, viz. (1) that the suit was barred by Act IV of 1884 (Madras), (2) that the District Munsif had no jurisdiction to entertain it on the Small Cause Side, and (3) that the tax, of which a refund was

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claimed, had been lawfully levied. The District Munsif disallowed their objections and decreed the claim with costs and the contention before me is that the decision is contrary to law as regards each of those objections.

As to the first objection, viz., that the suit cannot be maintained in a Civil Court, I am unable to support it. It is taken with reference to section 101 which provides that the adjudication of an appeal by the Municipal Council shall be final. Section 97 allows an appeal from the decision of the Chairman to the Municipal Council in regard to (i) any classification or revision under section 54, (ii) any valuation or assessment under section 65 and any revision thereof under section 71, and (iii) any tax on any vehicle or animal demanded on behalf of the Municipal Council. Act IV of 1884 came into force on the 2nd July 1884, and according to the previous decisions of this Court in *Kumayya* v. *Leman*(1) and in *Leman* v. *Damodaraya*(2) a distinction was made between a suit contesting the incidence of a tax *lawfully* imposed and a suit to recover back money wrongfully levied on the ground that the so-called tax had no *legal* existence. Section 85 of Act III of 1871 to which those decisions referred provided that "no person shall contest any assessment in any other manner than by an appeal as hereinbefore provided." Section 85 of the Act III of 1871 and section 101 of the present Act appear to me to be substantially the same, and the jurisdiction which the Civil Courts had under section 85 of the former Act was not taken away by section 101 of the Act now in force. Again, section 87 of Act III of 1871 provided a rule of decision impliedly for the guidance of Civil Courts and enacted that no tax shall be impeached by reason of any mistake in the name of any person liable to pay the tax, or in the description of any property liable to the tax, or in the amount of assessment, provided that the directions of the Act be in substance and effect complied with. Section 262 of the present Act re-enacts in substance section 87 and provides further by clause 2 that "No action "shall be maintained in any Court to recover money paid in "respect of any tax, &c.," levied under this Act, "provided that "the provisions of this Act relating to the assessment and levy of "such tax and to the collection of payments have been in substance "and effect complied with." There can therefore be no doubt

(1) I.L.R., 2 Mad., 37. (2) I.L.R., 1 Mad., 158.

that a suit will lie when the provisions of the Act have not been complied with in substance and effect in regard to the assessment and levy of such tax, and the tax cannot be considered to have legal sanction.

The second objection argued before me is that a Court of Small Causes has no jurisdiction to entertain this suit. It is conceded that under section 15 of Act IX of 1887 it would have jurisdiction if the suit were not specially exempted by the second schedule attached to that Act, but it is argued that it is so exempted and reliance is placed on paragraph 1 of the schedule which is in these terms :—"A suit concerning an Act or order "purporting to be done or made by the Governor-General in "Council or a Local Government, or by the Governor-General "or a Governor or by a Member of the Council of the Governor-"General or of the Governor of Madras or Bombay, in his official "capacity, or concerning an act purporting to be done by any "person by order of the Governor-General in Council or a Local "Government."

It is urged that the sanction and approval of the Governor in Council are necessary under sections 49 and 50 of Act IV of 1884 and that the levy of the tax with such sanction is an act done by the order of the Local Government within the meaning of the above cited paragraph. The act contemplated by paragraph 1 is an act done or ordered to be done by the Local Government in its executive or administrative capacity and the sanction or approval contemplated by sections 49 or 50 of Act IV of 1884 is not in my judgment within the purview of paragraph 1 of the second schedule.

The third objection is that the tax of which the refund was claimed was lawfully levied under section 53. After directing the Municipal Council to notify that a profession tax shall be levied, it provides that every person, who, within the Municipality, exercises any one or more of the arts, professions, or trades or callings specified in schedule A, shall, subject to the provisions of section 59, pay in respect thereof the sum specified in the said schedule, as payable by the persons of the class in which such person is placed. Section 60 provides that no person shall be liable to the payment of the tax under section 53, who shall prove that he has paid the tax for the same half-year in any other Municipality. It is not disputed in this

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case that the South Indian Railway Company had paid their profession tax to the Municipality at Negapatam when the Municipality at Tuticorin called upon them to pay their profession tax. The intention which the two sections suggest when they are read together, is that the person liable to pay a profession tax has to pay it but once, and that when he lawfully pays it in any one Municipality he is not liable to pay another profession tax for the same period in any other Municipality. Any other construction would lead to this result, —that the South Indian Railway Company would have to pay as many profession taxes as there are Municipal towns through which their Railway passes, though they exercise but one profession. The tax seems to be regarded as being in the nature of a license or registration fee, and when it is paid and the exercise of the profession is once licensed, no second license or registration fee is intended by the Legislature to be required for the same half-year. In this connection I may refer to the proviso of section 58 of the old Act. It was in these terms: "No person, who shall prove that he has paid the tax prescribed in this section in any one Municipality, shall be required to pay the same for the same half-year in any other Municipality, *unless it shall appear that he has exercised in both Municipalities within the same half-year the art, profession, trade or calling in respect of which he has been taxed.*" The omission in the present Act of the last clause is significant, and appears to confirm the view which I take.

The decision of the District Munsif is right, and I dismiss this petition with costs.