
(2003) 06 MAD CK 0080

In the Madras High Court

Case No : Second Appeal No. 1389 of 2000 and C.M.Ps. No. 12963 of 2000 and 3463 of 2003

A. Mohan Doss, A. Manikandan, A. Balamurugan, A. Kannan,
A. Dhanalakshmi and A. Pandiammal

APPELLANT

Vs

The Revenue Divisional Officer and The District Collector

RESPONDENT

Date of Decision : 16-06-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2003) 3 LW 580 : (2003) 2 MLJ 601

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : N. Kannadasan, for the Appellant; M.C. Swamy, Special Govt.Pleader, for the Respondent

Final Decision : Allowed

Judgement

A. Ramamurthi, J.—The plaintiffs in O.S.No.1010 of 1993 on the file of Additional District Munsif Court, Madurai, have filed the present second appeal, aggrieved against the judgment and decree in A.S.No.186 of 1995 dated 27.07.1999 reversing the judgment and decree of the trial court.

2. The case in brief is as follows:- The plaintiffs / appellants filed a suit for declaration that they belong to KATTUNAYAKAN community and direct the defendants to issue a Certificate accordingly. Plaintiffs 1 to 5 are sons and daughter of one Anthony. The 6th plaintiff is the mother. Thiru Anthony was appointed as Havildhar in central Excise Department under the category of Scheduled Tribe. Plaintiffs 1 to 5 have also obtained a certificate from the Tahsildar, Madurai North showing that they belong to KATTUNAYAKAN community and they were also enjoying the benefits pursuant to the certificate. In fact, the 6th plaintiff was also allotted a house under the category of Scheduled Tribe. She also contested the election and elected as a Panchayat Ward Member under the Tribal category. The S.S.L.C. book of Anthony also described him as

KATTUNAYAKAN. During 1979, the grandmother of plaintiffs 1 to 5 executed a Settlement Deed in favour of Anthony, wherein also they have been described as they belong to KATTUNAYAKAN community. Based upon these documentary evidence, plaintiffs 1 to 5 approached the defendants for getting a community certificate on 24.08.1992 and 18.01.1993; but unfortunately, the Revenue Divisional Officer without giving importance to these documents, have passed an order dated 18.02.1993 stating that plaintiffs 1 to 5 did not belong to KATTUNAYAKAN community. Thereafter, the plaintiffs issued a legal notice on 28.03.1993 and as there was no reply, they were constrained to file the suit.

3. The respondents / defendants filed a written statement and contended that Anthony belonged to "Kambalathu Naicker" Community and not KATTUNAYAKAN community. By producing false certificate, Anthony joined the service. The Government had issued an order dated 21.02.1989 that "Kudukuduppai" community cannot be added in the list of Scheduled Tribe. As the Tahsildar issued a false certificate, he has been suspended and disciplinary action is also pending. After considering the evidence and making sufficient enquiry, the order was passed by the Revenue Divisional Officer rejecting the request of the plaintiffs and, as such, the suit is liable to be dismissed.

4. The trial court framed 4 issues and on behalf of the plaintiffs, P.W.1 was examined and Exs.A-1 to A-33 were marked and on the side of the defendants, D.W.1 was examined and Ex.B-1 was marked. The trial court decreed the suit in favour of the plaintiffs and aggrieved against this, the defendants preferred A.S.No.186 of 1995 on the file of Principal District Court, Madurai and the learned Judge after hearing the parties, allowed the appeal, set aside the judgment and decree of the trial court and dismissed the suit. Aggrieved against this, the plaintiffs have come forward with the present second appeal.

5. The second appeal was admitted on the following substantial questions of law;

(1) Whether the lower appellate Court is correct in accepting the reasoning of the Tahsildar to the effect that the father of the appellants 1 to 5 has not produced any documents relating to his community status pertaining to the year 1950 ?

(2) Whether the lower appellate Court is correct in affirming the views of the revenue authorities that the appellants / plaintiffs should have produced documents of the year 1950?

(3) Whether the lower appellate Court is correct in accepting the reasoning in Ex.A-26 for rejecting the claim of the plaintiffs to the effect that the earlier community certificates were not issued in accordance with the procedure and after enquiry ?

(4) Whether the lower appellate Court is correct in accepting the reasoning of the revenue authorities as found in Ex.A-26 by invalidating all the earlier community certificates as if they were not issued as per the procedure?

6. Heard the learned counsel for the appellants and Special Government Pleader.

7. The plaintiffs filed the suit for declaration that they belong to KATTUNAYAKAN community and also to direct the defendants to issue a certificate. The plaintiffs approached the trial court by contending that they have already obtained a community certificate from various Tahsildars, who were then competent to issue such certificate. Thiru Anthony, father of plaintiffs 1 to 5 already entered into service of the Central Excise Department under the quota reserved for Scheduled Tribe as Havildhar. On and after 11.11.1989, in the State of Tamil Nadu, the scheduled tribes should obtain community certificates from the Revenue Divisional Officer, namely, the 1st defendant. Under the circumstance, the plaintiffs were constrained to approach the Revenue Divisional Officer for getting a permanent community certificate. It appears that the father of plaintiffs 1 to 5 had already taken up the matter with the second defendant and therefore, according to the plaintiffs / appellants, the 1st defendant had developed the prejudice as against the plaintiffs and, as such, in a haste manner, he had passed the order under Ex.A-26 dated 18.02.1993, rejecting the request of the plaintiffs for issuance of a community certificate and cancelled the earlier certificates.

8. The plaintiffs / appellants have filed Exs.A-1 to A-33 in support of their contention. Exs.A-1 to A-7, A-11 to A-17 and A-22 are the Community Certificates issued in favour of the plaintiffs and their father by various revenue authorities, describing them as they belonged to KATTUNAYAKAN community. Ex.A-8 is the certificate issued by the Superintendent of Central Excise certifying that the service extract of Anthony disclosing that he belonged to the Scheduled Tribe community. Ex.A-9 is the registered settlement deed of the year 1979, wherein also Thiru Anthony is described as belonging to KATTUNAYAKAN community. Ex.A-10 is the registered sale deed of the year 1972, wherein also the grandfather of Anthony is described as belonging to KATTUNAYAKAN community. Ex.A-18 is the proceedings of the second defendant Collector allotting house site patta under tribal category to the 6th plaintiff. Exs.A-19 and A-20 are the proceedings of the revenue authorities addressed to Anthony in his capacity as President of KATTUNAYAKAN Community Association. Ex.A-21 is the voters list disclosing all the members of the plaintiffs' family as belonging to KATTUNAYAKAN community. Ex.A-29 is the document which discloses that the 6th plaintiff was elected in the Ward Election of the Town Panchayat under tribal category. Exs.A-30 to A-33 are the school records of the plaintiffs disclosing their community status accordingly.

9. The trial court on the basis of the overwhelming documents, decreed the suit in favour of the plaintiffs. But the lower appellate court had reversed the finding mainly based upon Ex.A-26 without considering the overwhelming documents referred to above. In fact, it is a settled position of law that to reverse a well considered finding given by the trial court, there should be valid and convincing reason; but unfortunately, no such reason has been given as to why the overwhelming documents have to be ignored. The approach by the lower appellate court is not proper and correct. In fact, such approach has been condemned by the Apex Court in *Gulzar Singh Vs. Sub-Divisional Magistrate and*

Another, and State of Andhra Pradesh and others Vs. Nagam Chandrasekhara Lingam and others, to the effect that while verifying the claim of social status, discreet enquiry should not be conducted. It has also been held in Gayatrilaxmi Bapurao Nagpure Vs. State of Maharashtra and others, to the effect that greater care should be taken while considering the claim of a scheduled tribe. Even in the said judgment, the Apex Court has condemned the rejection of the claim of an individual about his community status, even though he has produced as many as 17 documents in support of his claim. But so far as this case is concerned, nearly 33 documents have been pressed into service to prove their claim. In fact, the defendants, excepting Ex.B-1, have not chosen to file any document to prove the suspension of the Tahsildar, who had issued the earlier certificates.

10. The plaintiffs have obtained community certificate from various Tahsildars prior to 11.11.1989 and, as such, they have to be treated as valid certificates. To support their contention, the learned counsel for the appellants relied on R.KANDASAMY ..vs.. THE CHIEF ENGINEER, MADRAS PORT TRUST 1997 (7) JT 660 and it is extracted as follows:

"From a combined reading of G.O.Ms.No.2137 dated 11.11.89 and letter of the Joint Secretary dated 3.4.1991 (supra) it follows that whereas a Community Certificate after 11.11.89 is required to be issued by the Revenue Divisional Officer, but the Community Certificates issued by the Tahsildar prior to 11.11.89 are valid certificates. In view of this position, it was not proper for the respondent to have insisted upon a fresh certificate to be produced by the appellant from the Revenue Divisional Officer as admittedly the Community Certificate produced by the appellant had been issued by the Tahsildar concerned in 1987, that is, prior to 11.11.89.

In our opinion the Community Certificate issued to a Scheduled Tribe candidate by the Tahsildar prior to 11.11.89 is a good and valid Community Certificate for all purpose so long as such a certificate is not cancelled. The authorities cannot decline to take that into consideration and insist upon a fresh community Certificate from the Revenue Divisional Officer".

This decision clearly applies to the case on hand in all fours.

11. The defendants previously raised a vague plea that the Civil Court has no jurisdiction; but in the earlier second appeal preferred by them, it has been held that the Civil Court has got jurisdiction and the matter was referred back to the lower appellate Court to consider the only issue whether the plaintiffs belonged to KATTUNAYAKAN community or not. Under the circumstance, it is not necessary to go into the question again, whether the Civil Court has got jurisdiction or not, since the matter has been set at rest already.

12. In view of the overwhelming documents filed on behalf of the appellants and in view of the decisions of the Supreme Court cited supra, there is no difficulty in coming to the conclusion that the judgment and decree passed by the lower appellate court is not proper and correct. In my view, the lower appellate court

has failed to take into consideration the various documents filed on behalf of the plaintiffs and mainly relied upon Ex.B-1 and, as such, the judgment and decree of the lower appellate court are liable to be set aside. The appellants have raised the substantial questions of law referred to above. In my view, the judgment and decree passed by the lower appellate court are liable to be interfered with.

13. In the result, the Second Appeal is allowed and the judgment and decree of the lower appellate court are set aside and the judgment and decree of the trial court are restored. There will be no order as to as to costs. Consequently, CMPs.No.12963 of 2000 and 3463 of 2003 are closed.