
(2002) 06 AP CK 0150

In the Andhra Pradesh High Court

Case No : Second Appeal No. 123 of 1991

B. Purnima Anantha Lakshmi

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 28-06-2002

Acts Referred:

Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)
Regulation of Issue of Community Certificates Act, 1993 — Section 21
Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2003) 6 ALD 63 : (2003) 3 ALT 658

Hon'ble Judges : Dalava Subramanyam, J

Bench : Single Bench

Advocate : Duba V.N. Babu, for the Appellant; Charuseela V. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

Dalava Subramanyam, J.—The appellant-plaintiff filed the second appeal against the decree and judgment in A.S.No. 91 of 1998 dated 25-7-1989 on the file of the District Court at Visakhapatnam in confirming the decree and Judgment in O.S.NO. 662 of 1982 dated 28-12-1987 on the file of the IV Additional District Munsif at Visakhapatnam in dismissing the suit filed for declaration that the plaintiff belongs to Kondareddy caste of Dummugudem village in Khammam District and for consequential relief.

2. The brief facts of the case are as follows:

The plaintiff contended that she belongs to a family of Kondareddy caste, which is classified as Scheduled Tribe, and that her father is Rambabu Reddy, whose parents are Narayana Reddy and Appalanarasamma, who lived at Dummugudem. All the family members of the plaintiff were recognized and treated as Kondareddy community since several decades. The plaintiff studied matriculation in the year 1979, Intermediate and B.Sc. first year in St. Joseph College at Waltair and the school records would show that she belongs to Scheduled Tribe.

While so, the plaintiff appeared for entrance examination of M.B.B.S and oral interview was conducted on 16-5-1981 and she was selected for admission in the M.B.B.S. course under the reservation quota of Scheduled Tribe. She came to know that her enemies sent an anonymous letter to the Government casting doubts over her caste and consequently, the 2nd defendant issued proceedings informing that her provisional selection and admission was kept in abeyance. Thereupon, she filed W.P. No. 1166 of 1982 and an interim direction was issued in the writ petition to admit her in the M.B.B.S course. The plaintiff was advised to file the present suit for declaration and hence the suit.

3. The 2nd defendant filed written statement, which was adopted by the 1st defendant. The 2nd defendant contended that the plaintiff was provisionally admitted in Andhra Medical College under the quota of Scheduled Caste since she claimed her caste as Kondareddy. Subsequently, on verification of the documents filed by the plaintiff, it was observed from the service records of the father of the plaintiff that they were residents of Rajahmundry and the father of the plaintiff studied in V.T. School, Rajahmundry and were residing at Visakhapatnam and her father's name was noted as Rambabu Reddy and hence a doubt had arisen regarding her caste. Thus the matter was referred to the Director of Tribal Welfare, who, after verification, sent a report that the plaintiff and her ancestors belong to Ganjamreddy community and they were residents of Rajahmundry and they were not residents of Dummugudem and plaintiff did not belong to Kondareddy caste as claimed by her.

4. Basing on the above pleadings, the following issues were framed and settled for trial.

(1) Whether the plaintiff is entitled for the declaration as prayed for?

(2) Whether the plaintiff is entitled for injunction as prayed for?

(3) Whether there is valid Section 80 C.P.C. notice?

(4) To what relief?

5. On behalf of the plaintiff P.Ws. 1 to 5 were examined and Ex. A-1 to A-4 were marked. On behalf of the defendants D.Ws.1 and 2 were examined and Ex. B-1 to B-41 were marked. The trial Court after appreciating the oral and documentary evidence held issues 1 to 3 against the plaintiff and accordingly the suit was dismissed.

6. Aggrieved against the decree and judgment, the plaintiff filed an appeal in A.S.No. 91 of 1988 on the file of the District Court, Visakhapatnam and the lower appellate Court after appreciating the evidence and other material on record dismissed the appeal confirming the judgment and decree of the District Munsif.

7. The appellant, aggrieved against the judgment and decree, filed the second appeal contending that the Courts below committed an error in not accepting Ex. B-3 when P.Ws. 2 to 5 deposed that they were not examined before the Enquiry

Officer. It is also contended that the Courts below failed to appreciate that the Enquiry Officer, conducted the enquiry behind the back of the plaintiff and did not give an opportunity to cross-examine the witnesses and the evidence was collected behind the back of the plaintiff and thereby violated the principles of natural justice. It is further contended that the Courts below relied on the true copies of various documents, which were inadmissible in evidence, and erroneously came to the conclusion that the plaintiff do not belong to Kondareddy community, For the above said reasons, the judgment and decree may be set aside by allowing the second appeal.

8. Now the following points arise for consideration.

(1) Whether the Courts below committed an error in coming to the conclusion that the plaintiff is not entitled to the relief of declaration as prayed for in spite of the fact that she filed the certificate issued by the Tahasildar, Visakhapatnam, which has not been cancelled by any authority?

(2) Whether the Courts below committed an error in coming to the conclusion that the plaintiff is not entitled to any relief as prayed for in the suit in spite of ample evidence placed before the Court?

(3) To what relief?

Points 1 and 2:- The plaintiff filed the suit for declaration that she belongs to Kondareddy caste and also for a consequential direction to the 2nd respondent to allow the plaintiff to continue her M.B.B.S course in Andhra Medical College, Visakhapatnam. The plaintiff studied at Visakhapatnam and she appeared for the entrance examination of M.B.B.S and oral interview was conducted on 16-5-1981 and she was provisionally selected to the M.B.B.S course under the reservation quota. Subsequently, on verification, it was found that she did not belong to Kondareddy community and therefore her provisional selection and admission, into M.B.B.S course was kept in abeyance and thereupon she filed a writ and as per the directions of this Court she was admitted and after disposal of the writ, she was disallowed to continue her studies. The defendants denied that the plaintiff belong to Kondareddy community. The father of the plaintiff Rambabu Reddy is examined as P.W.1 and he deposed that they belong to Kondareddy community, P.Ws. 2 to 5 said to have been enquired by the Enquiry Officer deposed that they never gave statements before the Tribal Welfare Officer and all of them stated that the plaintiff belong to Kondareddy community. The Senior Assistant of Andhra Medical College, Waltair is examined as D.W.1 and through him some documents were marked. D. Ramachandra Raju, Deputy Director in the department of Tribal Welfare is examined as D.W.2 and he deposed that the Convenor of Entrance Examination requested him to verify the caste of the plaintiff and during his enquiry, he directed the father of the plaintiff to produce a certificate from Tahasildar, Dummugudem in proof of his caste but he failed to do so. The Enquiry conducted by D.W.2 revealed that the father of the plaintiff and his family never resided at Dummugudem at any time and they did not belong to

Kondareddy community but they belong to Ganjamreddy community. During the course of his enquiry, he obtained the extracts, which were marked as Ex. B-24 to 27, 32 and 33. After completing the enquiry, he sent a report to the Principal of Andhra Medical College under Ex. B-4 opining that the plaintiff did not belong to the caste of Kondareddy and she did not belong to Scheduled Tribe.

9. The learned Advocate appearing for the appellant Sri Duba V.N. Babu argued that the Courts below committed an error in relying on Ex. B-4, which is the report of D.W.2 and that the said report was based on the material collected behind the back of the plaintiff and the plaintiff had no opportunity to cross-examine the witnesses.

10. D.W.2 examined P.Ws. 2 to P.W.5 during the course of enquiry and they stated before him that the plaintiff did not belong to Kondareddy community. When they were examined on behalf of the plaintiff, they denied having deposed before the enquiry officer and stated that the plaintiff belong to Kondareddy community. In view of the fact that P.W.2 to P.W.5 are only giving oral evidence, their evidence cannot be believed as against the documentary evidence available on record. It is significant to note that the father of the plaintiff was directed to produce a caste certificate from Tahasildar, Dummugudem of Khammam District, but he failed to do so. It is the contentions of the defendants that the Tahasildar Dummugudem is competent authority to issue the caste certificate, whereas the plaintiff produced the certificate issued by the Tahasildar, Visakhapatnam, who has no jurisdiction over Dummugudem village. It is also significant to note that a questionnaire was served on P.W.I during the enquiry conducted by the Tribal Welfare department. Therefore, it cannot be said that the principles of natural justice was violated and the evidence was collected behind the back of the plaintiff. D.W.2 is a public servant and he has no motive or ill-will to depose against the interests of the plaintiff. For the above said reasons, the Courts below have not committed any error in relying on Ex. B-4 and the same is valid since the principles of natural justice was not violated.

11. The learned Advocate appearing for the appellant further contended that as long as the certificate issued by the Tahasildar, Visakhapatnam is not cancelled by any competent authority, the plaintiff is entitled for declaration as prayed for. He relied on the following decisions.

(1) R. Kandasamy v. The Chief Engineer, Madras Port Trust 1997 (8) Supreme 127.

(2) D. Manikyamala v. Andhra Medical College, 1990 (3) ALT 355 :1990 (2) An.W.R. 21 : 1990 (2) APLJ 376.

(3) Miss. Y. Padma Myihili v. A.P. University of Health Sciences 1989 (3) ALT 464 : 1989 (2) APLJ 288.

12. The learned Advocate also placed reliance on Section 21 of the A.P. (SC, ST and BCs) Regulation of Issue of Community Certificates Act, 1993 (for short "the

Act"), Section 21 of the Act reads as follows:

"21. Transitional Provisions:- A community certificate issued by any authority competent to issue the same under the relevant rules or orders before the commencement of this Act shall, unless it is cancelled under the provisions of this Act, be valid and shall be deemed to have been issued under the provisions of this Act.

13. The learned Advocate for the appellant while placing reliance on Section 21 of the Act contended that the community certificate was issued by the Tahasildar, Visakhapatnam, which is marked as Ex. B-3, and also long as it is not cancelled by the competent authority, it is valid and therefore the plaintiff is entitled to the declaration as prayed for.

14. The plaintiff having filed the suit for declaration, initial burden is on the plaintiff to prove that she belongs to Kondareddy community, Except the oral testimony of P.Ws. 1 to 5 and the impugned certificate issued by the Tahasildar, Visakhapatnam, there is no other document to prove that she belongs to Kondareddy community. The Deputy Director of Tribal Welfare made an enquiry wherein P.Ws. 2 to 5 deposed that the plaintiff did not belong to Kondareddy community and D.W.2, who is a public servant, enquired into the matter and collected some documents and basing on the said documents, he sent a report stating that the plaintiff did not belong to Kondareddy community. In fact, the plaintiff was admitted to the M.B.B.S course subject to the genuineness of the claim of her social status. As seen from Ex. B-41, it was clear that the genuineness of the claim of the social status shall be referred to the Director, Tribal Welfare, whose decision shall be binding on the candidate. The Deputy Director, Tribal Welfare enquired into the matter and sent his report under Ex. B-4, which is conclusive and therefore, the appellant-plaintiff was directed to discontinue her studies. She continued her studies as per the interim directions in W.P.No. 376 of 1983 and the said writ petition was dismissed. The authorities were directed to issue a show cause notice to the appellant and after considering her reply appropriate orders were passed and she was not permitted to continue her studies. The findings in the writ petition would also operate as constructive res judicata. Further, in the writ petition, it was also held that the enquiry conducted was just and proper. The plaintiff did not examine the Tahasildar, Visakhapatnam, who issued the impugned certificate Ex. B-3. There is no evidence on what material Ex. B-3 was issued by the Tahasildar, Visakhapatnam. No witness was examined to prove Ex. B-3. In view of the fact that Ex. B-3 is a questioned document, the plaintiff failed to prove the validity of the document by summoning the persons concerned. In view of the fact that the plaintiff failed to prove Ex. B-3, it cannot be said that as long as Ex. B-3 is not cancelled, the plaintiff is entitled to the declaration prayed for, Since the plaintiff failed to prove Ex. B-3, the plaintiff is not entitled to the declaration prayed for. Since the appellant-plaintiff was directed to discontinue her studies, she is not entitled to the injunction prayed for. Both the Courts below considered all the issues raised

by the appellant-plaintiff and rightly came to the conclusion. There are no tenable grounds to set aside the findings of the lower Courts. For the above said reasons, there are no merits in the appeal and no substantial question of law involved and, hence, the second appeal is liable to be dismissed.

15. In the result, the appeal is dismissed confirming the judgment and decree in A.S.No. 91 of 1988 dated 25-7-1989 on the file of the District Court, Visakhapatnam. No order as to costs.