
(1989) 03 MAD CK 0006

In the Madras High Court

Case No : C.R.P. 2053, 3234 and 3235 of 1988

Inspecting Asst. Commissioner Income Tax Office, Madurai
Range

APPELLANT

Vs

R. Vasu

RESPONDENT

Date of Decision : 17-03-1989

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 27 Rule 8B, 9

Citation : (1990) 49 TAXMAN 307

Hon'ble Judges : Sathiade, J

Bench : Single Bench

Advocate : N. Velusami, for the Appellant; K. Ramamurthi for Mr. A. Sivaji, for the Respondent

Judgement

Sathiadev, J.—Second defendant in O.S. 597 of 1987 Sub Court, Pudukottai is the petitioner in C.R.P. 2053 of 1988 and respondent in

C.R.P. 3234 of 1988, whereas the plaintiff is the respondent in C.R.P. 2053 of 1988 and petitioner in C.R.P. 3234 of 1988. The suit was filed by

the plaintiff, an U.D.C. working in the office of the Income tax department, City Circle 1(4) Madurai Range, for a declaration that he belongs to

the Schedule Tribe community as Kattunaicken and consequentially for grant of an injunction to restrain the defendants from enforcing or initiating

any further action pursuant to the proceedings of the second defendant dated 7.9.1987, which came to be issued on charges framed against him

that he had produced a bogus caste certificate. The annexures to the charge memo deal with materials like statement of imputation and misconduct

and documents relied on, etc. Pending disposal of the suit, he filed I.A. 561 of 1987 and sought for an interim injunction to restrain the second

defendant from proceeding further with the disciplinary proceedings against him. Second defendant filed I.A. 672 of 1987 and prayed for dismissal

of the suit and the injunction application viz. I.A. 561 of 1987 on the ground that the civil Court has no jurisdiction to deal with a service matter.

Both these applications were heard together, and a common order was passed by the trial court, granting injunction in favour of the plaintiff, and

dismissing I.A. 672 of 1987. Aggrieved against the order of injunction granted by the trial Court, second defendant preferred C.M.A. 8 of 1988

before the District Court of Pudukottai. The Appellate Court allowed the C.M.A. and vacated the order of injunction granted by the trial court.

Aggrieved against the order of dismissal of the injunction application, the plaintiff preferred C.R.P. 3234 of 1988 in this Court, whereas the second

defendant filed C.R.P. 2053 of 1988 against the order of the trial Court passed in I.A. 672 of 1987.

2. In these revision petitions, it is contended that the Civil Court has no jurisdiction to deal with the reliefs claimed in para 14(b) and (c) of the

plaint, in that, after the constitution of the Administrative Tribunal by virtue of Central Act 13 of 1985, service matters as defined in S.3(c) are

excluded from the jurisdiction of Civil Court under S.28 read with S. 14 of the Act with effect from 1.11.1985, and hence, the suit ought to have

been dismissed.

3. Service matters as defined in S. 3(c) means all matters relating to the service conditions in respect of a person employed in Union of India which

includes disciplinary matters and therefore, in view of S.28, which excludes the jurisdiction of any Court other than the Supreme Court, in dealing

with "service matters" of the concerned members of the service covered by the Act, it has to be seen whether in a suit of this nature, by seeking

any consequential relief, a Civil Court can interfere with the disciplinary actions taken in "service matters" covered by the Act.

4. Mr. K. Ramamurthi, learned counsel for the plaintiff, relies upon the decision reported in Venkataramanaswami Deity of Kothur v. Vadugammal

87 L.W. 481 (D.B.) =1974 2 M.L.J. 231, wherein it was held that the scheme regarding the jurisdiction of the Civil Court in the T.N. Act 19 of

1951 is different from what is provided in T.N. Act 26 of 1948, because the aim of the Act is not to exclude the jurisdiction of the Civil Court but

to facilitate proper administration of religious institutions by following certain procedures prescribed for getting remedies either from the Deputy

Commissioner or the Commissioner. Learned counsel submits, that, when an incidental relief arises out of the main relief which is outside the scope

of Act, 13 of 1985, in view of S. 9 C.P.C. a civil suit would still lie for granting incidental relief, which may come within the folds of the Act, if it is

claimed as a substantial relief. He also relies upon the decision reported in Musamia Imam Haider Bax Razvi Vs. Rabari Govindbhai Ratnabhai and

Others, which dealt with the scope of S.70(b) of Bombay Tenancy and Agricultural Lands Act, in which, S.85 states that no Civil Court shall have

jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by certain

authorities. In dealing with this aspect it was held that the plea, relating to tenancy being a subsidiary plea, and the main plea being whether the

defendants had become the statutory owners of the disputed lands, the jurisdiction of the civil Court was not barred by virtue of the said Section, in

dealing with subsidiary relief. He also referred to a passage in page 254 of Wade's Administrative Law, 5th Edn. which reads as follows:½

The Home Secretary's statutory power to deport aliens is similarly limited by the word "alien". Whether a person is, in fact or in law an alien or a

British subject is a question which the court must determine in case of dispute. Alien nationality is the preliminary or collateral condition on which

the Home Secretary's power depends. If he could determine this himself conclusively, a British subject mistakenly taken for an alien would have

no legal protection, and plainly this would be intolerable.

5. He would then refer to S. 22 of the Central Act 13 of 1985, which deals with the procedure and powers of the Tribunal. He submits that, when

the main relief that plaintiff belongs to a particular Scheduled Tribe community could be secured only by filing a suit in civil court, and when civil

courts are not barred from granting an incidental or consequential or supplemental relief, and when the determination of the supplemental relief is

dependent upon what the Civil Courts could decide on the main relief, neither S.28 nor S. 14 of the Act could ever prevent the civil Courts from

considering the "lis" relating to reliefs claimed in para 14 (b) and (c) of the plaint. He further submits that, on succeeding on the main relief, plaintiff

would be able to avoid the disciplinary proceedings, which are based on a total misconception that he is not a Schedule Tribe. Even assuming that

the Tribunal alone could deal with this matter, prudence is required on the part of the defendants authorities to await the decision of the Civil Court

before ever drastic consequences are visited upon the plaintiffs, and more particularly, when they have not sought for proper verification from the

Collector, as decided by the Division Bench of this Court regarding the correctness of the Community Certificate relied upon by him.

6. These contentions proceed on the basis that the Tribunal supplements the jurisdiction of Civil Courts. In dealing with the scope of S.28 read

with S.14 in *Sampath Kumar v. Union of India*, AIR 1987 S.C. 386 it was held: 1½

...The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice....

In *J.P. Chopra and others v. Union of India and others* AIR 1987 1 S.C. 46, it was again reiterated that the exclusion of civil courts under the Act

is total except for the Supreme Court, and that it being a substitute of the High Court, it has the necessary jurisdiction, power and authority to deal

with all questions pertaining to constitution and validity or otherwise of such laws as offending Act. 14 and 16(1) of the Constitution. In

Sambamurthi v. Collector, Kakinada 1980 L.I.C. 348, a Division Bench of the Andhra Pradesh High Court in dealing with more or less a similar

situation, held that, even though the main relief may come within the fold of a civil court, yet, it is the supplemental and consequential relief relating

to a "service matter" arising out of the said main relief, which cannot be decided by the civil court. It was a case wherein the plaintiff sought for a

declaration regarding his date of birth, and it was held that such a relief is within the jurisdiction of the civil court, but when he had asked for the

relief of injunction preventing the Government from superannuating him as per the records, it was held that he was not entitled to the grant of

injunction pertaining to a "service matter".

7. S.9, C.P.C. states that courts shall have jurisdiction to try all suits of civil nature except suits in which their cognizance is either expressly or

impliedly barred. Under S.28 of the Act, there is an express bar of jurisdiction of Civil Courts pertaining to "service matter" as defined in S.3 (c) of

the Act. The charge memo dated 7.9.1987 pertains to disciplinary proceedings initiated against the plaintiff, and it being a "service matter" relating

to which Administrative Tribunal alone having been invested with the authority to decide the said dispute, in the light of the decisions of the supreme

Court above referred to, under the guise that the relief of injunction prayed for is a supplemental or consequential or incidental relief to the main

relief in the suit, it cannot be claimed that such a relief could be tried by a civil Court. Without any incidental or consequential or supplemental relief,

the main relief prayed for in the suit could be obtained by the plaintiff. It is not his claim that unless he seeks for any of the incidental reliefs, he

cannot secure the main relief. On securing the declaration, it is always open to him to seek for appropriate relief pertaining to the incidental reliefs

which he had sought for Pending suit, whatever relief is available before Tribunal, he can avail of. Therefore, any and every, dispute which would

come within the definition of service matters in S. 3(c), could never be dealt with by civil Courts and the High Court, whether they form the main

relief or incidental, consequential or supplemental relief and the like because of S.28 read with S. 14 of the Act.

8. Hence, there is no bar in the trial Court to proceed with the trial of the suit so far as it relates to the prayer in para 14(a) of the plaint, but it has

no jurisdiction to grant the relief sought for in para 14(b) and (c) of the plaint. Therefore, C.R.P. 3234 of 1988 is dismissed. C.R.P. 2053 of 1988

is allowed, resulting in the suit being dismissed only in respect of the reliefs covered by paragraphs 14(b) and (c) of the plaint. No costs.

9. C.R.P. 3235 of 1988. Petitioner in C.R.P. 3234 of 1988 is the petitioner herein Against the order Passed by the trial Court in I.A. No 561 of

1987, second defendant preferred C.M.A. 8 of 1988 to District Court, Pudukottai, Pending its disposal. I.A. 33 of 1988 was filed by the

petitioner herein to dismiss the C.M.A. in limine on the ground that a private counsel had preferred the appeal for the Department only with his

signature, and therefore, it is not maintainable. This was opposed by second defendant by claiming that the deponent of the counter affidavit is the

appointing and disciplinary authority for the petitioner, and therefore, he had chosen to appoint Mr. K. Lakshminarasimhan advocate, who is the

Departmental Special Counsel for prosecutions. There is no bar under Order 27 Rule 8-B C.P.C. preventing the Government to appoint any

private counsel for any case on its behalf, apart from a Law Officer to defend matters in which it is a party. Once a counsel is authorised by the

State to appear on its behalf, he has the necessary authority to file the appeal on behalf of the State. As pointed out by the appellate court, Order

27 rule 8-B, C.P.C. is not restrictive or exclusive but only inclusive and as such there is no bar to engage the present counsel on record to file and

argue the appeal, Hence, there is no substance in this Revision petition and therefore it is dismissed with costs.