
(2013) 02 AP CK 0020

In the Andhra Pradesh High Court

Case No : Second Appeal No. 347 of 1997

Ragulavalasa Chiranjeevi Rao

APPELLANT

Vs

The State of A.P., Project Officer, Integrated Tribunal
Development Agency and The Mandal Revenue Officer

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Citation : (2013) 4 ALD 153 : (2013) 4 ALT 665

Judgement

Samudrala Govinda Rajulu, J.—Unsuccessful plaintiff in both the Courts below is the appellant in this second appeal. He filed the suit in the trial Court for declaration that he belongs to "kondadora" caste which is a scheduled tribe under the constitution (Scheduled Tribes and Scheduled Castes) Order, 1950 issued by the President of India and for consequential injunction restraining the defendants from making any enquiry into truth or otherwise of caste of the plaintiff in violation of caste certificate issued by the 3rd defendant. According to the plaintiff, he belongs to "kondadora" caste which is a schedule tribe and after detailed enquiry, the Mandal Revenue Officer, Kurupam issued caste certificate on 27.04.1987 to that effect. It is contended that the 2nd defendant/Project Officer Integrated Tribal Development Agency, Parvathipuram took into consideration the said caste certificate issued by the 3rd defendant/Mandal Revenue Officer, Kurupam and appointed the plaintiff as BEd., Assistant on 06.01.1988 and posted the plaintiff at Ashram School, Dharmalakshmipuram and that therefore the defendants are estopped to make further enquiry with regard to caste of the plaintiff and that the 3rd defendant issued notices for making enquiry into caste of the plaintiff which is without jurisdiction. On the other hand, it is contention of the defendants that the plaintiff managed to secure false certificate from the 3rd defendant as if he belongs to "kondadora" caste and that on complaint made by one Padmanabha to the defendants 1 and 2 and the Director of Tribal Welfare, Hyderabad on the ground that the plaintiff belongs to "Kshatriya" caste, the 3rd defendant was directed to conduct enquiry into truth of the matter, and that the suit is not maintainable in Civil Court and that the suit is bad for want of notice u/

s 80 CPC.

2. After trial, in which both the parties let in oral and documentary evidence, the trial Court dismissed the suit without costs, giving findings on all issues. On appeal by the plaintiff, the lower appellate Court dismissed the appeal without costs, confirming findings of the trial Court. Against the appellate decree and judgment, the plaintiff filed this appeal. Previously, this Court by the judgment dated 21.02.2007 dismissed this second appeal without costs on merits. As against the said judgment of this Court, the appellant/plaintiff filed Civil Appeal No. 2629 of 2009 (arising out of SLP (C) 16522 of 2007). The Supreme Court by order dated 17.03.2009 disposed of the appeal with the following observations:

In our considered view, the approach of the High Court is contrary to the mandatory provisions of Section 100 of Code of Civil Procedure. On this short ground, the judgment of the High Court is unsustainable and therefore requires to be set aside. We do so. The High Court will not consider as to whether any substantial question of law or questions of law would arise on the basis of the pleadings of the parties, if they arise as indicated above, and then, will hear the parties and dispose of the same in accordance with law. The appeal is disposed of accordingly.

3. Therefore, it has to be seen in this appeal whether the second appeal is maintainable in terms of Section 100 CPC, inasmuch as whether any substantial question of law arises for determination in this second appeal? After filing of this second appeal, no admission procedure was followed and no substantial question of law was framed by the learned Judges and no admission of the second appeal was made. Therefore, primary question of this Court is to find whether any substantial question of law emanates in this second appeal?

4. On perusal of judgments of Courts below, this Court is of the opinion that the only substantial question of law which arises for determination in this appeal is ---- Whether the civil suit is maintainable for declaration of a person's caste?

5. It is contended by the appellant's counsel in this second appeal that the suit is not filed by the plaintiff for amendment of the constitution (Scheduled Tribes and Scheduled Castes) Order, 1950 issued by the President of India by way of inclusion of the plaintiff's caste "Kondadora" into the said order and that therefore the Courts below erred in holding that the suit is not maintainable. The present suit is only one in which the plaintiff claimed personal relief and not general relief. The Allahabad High Court in Shiv Pujan Prasad Vs. State of U.P., , while dismissing a writ petition, observed as follows:

However, the petitioner is at liberty to approach competent civil Court and seek declaration regarding his actual caste, and also seek other consequential relief if the petitioner succeeds in such suit proceedings and held to be "Majhwar" or "Manjhi" caste belonging to the scheduled caste, he will be entitled for his post retrial benefits and pension, by ignoring the order of his dismissal from service while treating him in continuous service till attaining his age of superannuation.

6. It is therefore contended by the appellant's counsel that Civil Suit is maintainable for declaration of the plaintiff's caste.

7. u/s 9 CPC, the Civil Court has jurisdiction to try all suits of a civil nature, except those whose cognizance is either expressly or impliedly barred. It is only after the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act, 1993, there is prohibition u/s 17 creating bar of jurisdiction of civil Courts. The said Act has no application to the present suit of the plaintiff, as it was instituted in the trial Court prior to the 1993 Act coming into force. Therefore, this Court has no hesitation to conclude on the substantial question of law that the suit as framed for the primary prayer for declaration of the plaintiff's caste is maintainable.

8. In this second appeal, the question of maintainability of the suit is of secondary importance, in view of findings of both the Courts below on facts to the effect that the plaintiff does not belong to "kondadora" caste which is a scheduled tribe. This question is primary question which enables the plaintiff to have relief in the suit in his favour. The plaintiff can succeed in these civil proceedings only when he primarily succeeds in proving his caste as "kondadora" caste. The trial Court as well as the lower appellate Court after considering the entire oral and documentary evidence produced by both the parties came to the conclusion that the plaintiff does not belong to "kondadora" caste and that he belongs to "oriya kshatriya" caste. Admittedly, the entire educational records of the plaintiff namely Ex. B. 7 and B. 8 transfer certificates show that he belongs to "oriya kshatriya" caste. The plaintiff based his claim for "kondadora" caste on Ex. A. 2 sale deed dated 05.03.1945 said to have been executed in favour of some distant relations of the plaintiff. Exs. A. 11 and A. 12 certified copies of judgments in Election Petition No. 13 of 1983 and O.S. No. 21 of 1989 are not inter partes. The Courts below considered the entire evidence on record in the right perspective and came to the correct conclusion that the plaintiff managed to obtain Ex. A. 1 caste certificate from the Mandal Revenue Officer, Kurupam. The said finding on facts is neither perverse nor inconclusive and is not liable to be set aside. The said finding of fact is not liable to be disturbed u/s 100 C.P.C. in this second appeal.

9. In I.B. Rajendra Prasad Vs. The Director of Tribal Welfare and Others, , Division Bench of this Court negated contention based on estoppel against making enquiry as to correctness of caste certificate issued previously, in the following lines:

At the outset, it is to be made clear that so far as the caste certificates are concerned, a false certificate or wrong certificate, on the basis of which certain benefits are given, does not create estoppel in favour of the beneficiary of the certificate. On the first hand, there is no estoppel against the statute or a legal provision and on the second, benefits which have been received in the shape of appointment or admission or the like on the basis of the certificate cannot be said of having been conduct undertaken to the detriment of the person taking

the benefit. Reservations made on the basis of enabling constitutional provisions to give a beneficial treatment to non-advanced groups in the society is a constitutional right in favour of those persons and it can hardly be said that a person who has got the benefit erroneously being described as a member of the privileged community can be allowed to plead estoppel to defeat the constitutional protection afforded to the protected groups.

10. Therefore, there is no legal prohibition for the second defendant to give direction to the 3rd defendant to make enquiry into correctness of Ex. A. 1 caste certificate previously issued in favour of the plaintiff. The plaintiff cannot stall the enquiry by adopting litigious methods.

11. In view of my discussion of the entire gamut of the case, this Court is of the opinion that the Courts below committed no error on facts. In the result, the second appeal is dismissed with costs.