

(1969) 08 MAD CK 0025
In the Madras High Court

Souriyar and Others

APPELLANT

Vs

N. Shanmugasundaram Pillai and Another

RESPONDENT

Date of Decision : 04-08-1969

Acts Referred:

Citation : (1972) 2 MLJ 62

Hon'ble Judges : K. Veeraswami, J

Bench : Single Bench

Judgement

K. Veeraswami, J.—It seems to us that the decree of the lower appellate Court which reversed the trial Court's decree cannot be sustained. The plaintiffs are caste Hindus who brought the suit for a declaration that they and their representatives were exclusively entitled to use the suit property for burial and cremation and for a permanent injunction restraining the appellants and the persons they represent from using that property for that purpose. Both the Courts have found that the suit site covered by Survey No. 36/8 had been as a matter of fact used exclusively by the caste Hindus and such user by custom has also been established. The trial Court was of the view that the custom was unreasonable in view of the provisions of Act XXII of 1955. But in this respect the lower appellate Court differed. In its view, the custom established could not be said to be unreasonable.

2. We are of the view that Section 4(iv) read with Sections 13 and 16 of Act XXII of 1955 leaves no room for doubt that no injunction against the appellants could be given. Section 4(iv) is specific that whoever on the ground of untouchability enforces against any person any disability with regard to the use of burial or cremation ground shall be punishable with imprisonment which may extend to six months, or with fine, which may extend to five hundred rupees, or with both. The Act itself was intended to prescribe the punishment for the practice of untouchability and for the enforcement of any disability arising therefrom and for matters connected therewith. The Act in effect purported to abolish untouchability in respect of the matters covered by it. Section 3 prescribes

punishment for enforcing religious disabilities and Section 4 similarly for enforcing social disabilities. Refusal to admit persons to hospitals, etc., on the ground of untouchability is made punishable by Section 5. Other offences arising out of untouchability are provided for by Section 7. The civil Court's jurisdiction is limited by Section 13 which says that no civil Court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of the Act. Further, the Section says that no Court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of untouchability. That is a comprehensive limitation which will cover the instant case as well. Moreover, Section 16 gives the Act an over-riding effect and says that its provision will prevail notwithstanding any other Law for the time being in force or any custom or usage. Recognition by means of restraining the defendants from using the suit burial ground will certainly be contrary to Section 4(iv), which disables any person from (preventing another) using the burial ground on the ground of untouchability.

3. The second appeal is therefore allowed and the decree and judgment of the trial Court are restored. In the particular circumstances, there will be no order as to costs.