

(2000) 04 MAD CK 0051

In the Madras High Court

Case No : S.A. No's. 993 and 994 of 1998 and C.M.P. No's. 9457, 9458 of 1998 and 5533 of 1999

State of Tamil Nadu and two others

APPELLANT

Vs

Durairaj and another

RESPONDENT

Date of Decision : 28-04-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9
Constitution of India, 1950 — Article 341, 342, 366(24)

Citation : (2000) 2 CTC 425 : (2000) 2 LW 495

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. Dhandapani, for the Appellant; Mr. V. Radhakrishnan, for the Respondent

Judgement

1. Since suits, appeals were disposed of by a common judgment the present second appeals are being disposed of by the following common judgment.

2. In both the appeals the District Collector, Ramanathapuram District, Assistant Collector/Revenue Divisional Officer, Paramakudi, Tahsildar,

Paramakudi are the appellants. Respondent in both the appeals are brother and sister. Brother viz., Durairaj has filed O.S.No.63 of 1991 on the

file of Subordinate Judge, Ramanathapuram for mandatory injunction against the defendants directing them to issue a community certificate in the

revised format on the basis of the community certificate already issued in favour of the plaintiff on 1.2.1980. His sister viz., Guruvammal has filed

suit in O.S.No.60 of 1991 on the file of the same Court for permanent injunction against the defendants restraining them from initiating any enquiry

including the enquiry contemplated in Roc.No.A3/269/90 regarding the issuance of a community certificate in her favour. The trial Court on the

basis of the oral and documentary evidence granted decree in both the cases as prayed for. Aggrieved by the said decrees the defendants therein

preferred appeals in A.S.No.73 and 74 of 1995 before the Additional District Court, Ramanathapuram. By a common Judgment the appellate

Court-dismissed both the appeals and confirmed the decree granted by the trial Court. Against the concurrent decision of the Courts below the

Revenue Authorities have preferred the above second appeals.

3. On the following substantial question of law this Court has entertained both the second appeals on 24.7.1998:

Since the Court below have not properly applied the correct proposition of law applicable to the facts of the case and not considered the entire

evidence applicable to the issue in question.

4. Heard Mr. N.Dhandapani, learned Government Advocate for appellants and Mr. V.Radhakrishnan, for respondents.

5. Learned Government Advocate by pointing out the decision of the Hon''ble Supreme Court reported in State of Tamil Nadu and others Vs. A.

Gurusamy, would contend that both the suits filed by the respondents in these second appeals are not maintainable and prayed for setting aside the

orders passed by both the Courts below.

6. On the other hand, Mr. V. Radhakrishnan, learned counsel appearing for the respondents would contend that judgment of the Supreme Court

referred to above is not applicable to the facts of the present cases, since they are not seeking declaration to the fact that presidential notification is

bad or their community is to be included in the List. He also contended that in the light of the factual findings rendered by both the Courts below

based on acceptable oral and documentary evidence, interference by this Court u/s 100 of CPC is not warranted and prayed for dismissal of both

the second appeals.

7. I have carefully considered the rival submissions.

8. According to the respondent in Second Appeal No. 993 of 1998 he belongs to Kattunaicken community. He obtained community certificate on

1.2.1980 stating that he belongs to Kattunaicken community after due enquiry by the third defendant. There is no dispute that Kattunaicken

community is one of the communities listed under Scheduled Tribe. Thereafter, he got an appointment in United Commercial Bank. After joining

service in the Bank after some time the Bank issued a circular dated 21.12.1990 directing the employees who belong to Scheduled Tribe

community to produce community certificate in the revised format to be issued in the rank of Revenue Divisional Officer, accordingly he applied to

the second defendant for grant of community certificate in the revised format. Since the second defendant refused to issue community certificate in

the revised format, he filed the said suit.

9. The case of respondent in Second Appeal No.994 of 1998 is that she belongs to Kattunaicken community which is classified as Scheduled

Tribe. She applied for community certificate before the third respondent. The third respondent after due enquiry on 31.5.1968 issued a certificate

to her as one belonging to Kattunaicken community. Thereafter she was appointed as a Clerk in the Postal Department on 17.10.1968. It is further

stated that at the instance of some third parties who are inimical towards her, defendants 1 and 2 made an enquiry about the genuineness of her

community. While the enquiry was pending first defendant cancelled her community certificate dated 31.5.1968 on the ground that the Tahsildar

was not competent to issue the community certificate. In the above circumstances she filed the said.

10. It is clear that in the first case third respondent had issued community certificate on 1.2.1980 that too after due enquiry stating that he belongs

to Kattunaicken community. In the later case the very same Tahsildar, Pararaakudi third respondent therein on 31.5.1968 issued a certificate

stating that she belongs to Kattunaicken community. It is further seen that on the basis of the community certificate issued by Tahsildar third

respondent, they secured a job in the Bank and Postal Department in the quota reserved for Scheduled Tribe. After several years in the first case

the Bank management asked the respondent herein to get a fresh community certificate in the format prescribed from the concerned authority viz.,

Revenue Divisional Officer. In the second case after several years on the basis of a complaint by some third parties the first defendant cancelled the

community certificate.

11. Now, I shall consider the decision of the Supreme Court referred to by the

learned Government Advocate in State of Tamil Nadu and others

Vs. A. Gurusamy, . In the above decision the Supreme Court has held,

3. The only question is whether the suit is maintainable? By operation of Sec. 9 of CPC, a suit of civil nature cognizance of which is expressly or

by implication excluded, cannot be tried by any Civil Court. The declaration of the President of India, under Art. 341 and 342 of the Constitution,

with respect of Lists of the Scheduled and Scheduled Tribes in relation to a State, that a particular caste or tribe is defined in Art. 366 (24) or (25)

respectively, is conclusive subject to an amendment by the Parliament under Art. 341(2) and 342(2) of the Constitution. By necessary implication,

the jurisdiction of the Civil Court to take cognizance of and give a declaration stands prohibited....

The Supreme Court after saying so allowed the appeal filed by the State of Tamil Nadu and dismissed the suit filed by the plaintiff therein. I have

already referred to the relief prayed in our suits. After going through the factual position in the judgment of the Supreme Court and the ultimate

decision, in the light of the relief prayed for in our case cases, I am of the view that the said judgment is not helpful to the appellants contention. In

this regard it is useful to refer the decision of S.M.Abdul Wahab.J., in Second Appeal No.370 of 1997 dated 30.03.1999. The learned Judge had

an occasion to consider similar claim as well as the very same decision of the Supreme Court i.e., State of Tamil Nadu and others Vs. A.

Gurusamy, . The learned Judge after referring paragraph 3 of the decision of the Supreme Court has concluded,

8. Therefore, the Apex Court has categorically stated that by necessary implication there cannot be a challenge to the declaration by the President

of India with respect to- the lists of Scheduled caste and Scheduled Tribes of a State and on this aspect there cannot be any dispute at all by

anybody. A list published by the President of India under Article 341 and 342 is final and conclusive. Only, the parliament under Article 341(2)

and 342(2) can alter or vary the list.

9. Here, we are not concerned with the names contained in the list as declared by the President and published under Article 341 and 342 of the

Constitution. We are concerned, as to whether the plaintiffs are eligible to be called by a name of a particular community. Here, in this case it is a

particular community. There is no challenge to the inclusion or exclusion of the name of this community in the list.

The learned Judge has also concluded that,

11..... A close reading of the judgment of the Apex Court, and writ petition will show that the Apex Court did not specifically and categorically

hold that the civil court is incompetent or has no jurisdiction to go into the question whether the particular person or persons or a group of persons

belong to a particular community or not.

12. In order to appreciate the issue in question it is better to refer Section 9 of Code of Civil Procedure.

Section 9. Courts to try all civil suits unless barred:-

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their

cognizance is either expressly or impliedly barred.

After going through the Section 9 of CPC as well as notifications made by the President of India under Article 341 of the Constitution in so far as

Scheduled Tribe and Article 342 of the Constitution for Scheduled Caste, I am of the view that Civil Court has no jurisdiction to take cognizance

and give declaration with reference to the names/communities contained in the List published by the President of India under Article 341 and 342

of the Constitution. It is not the case of the appellants that the respondent in both the second appeals prayed for inclusion of their community in the

List published by the President of India as stated above. In other words the Civil Court has no jurisdiction to hold against inclusion or deletion of

communities in the List published by the President of India. I have already mentioned the relief prayed for. by both the respondent. In the light of

the relief prayed for by the respondents herein and in the absence of any question relating to the List published by the President of India under

Article 341 and 342 of the Constitution I am in agreement with the view expressed by S.M.Abdul Wahab.J., and I hold that the Hon"ble Supreme

Court did not specifically and categorically decided the jurisdiction of the civil Court to go into the question whether a group or a person belong to

a particular community or not. Accordingly I am not accepting the only contention raised by the learned counsel for appellants.

13. As regards the Gurusamy's case, 1997 (1) L.W. 686 is concerned, though

the Supreme Court has ousted the jurisdiction of the Civil Court, I am of the view that it may be applicable only as far as inclusion or exclusion of Scheduled Tribes in the List of Scheduled Tribes Order to which the President alone is empowered with the approval of the Parliament as set out in Article 342 of the Constitution. Now, I shall refer the other decisions of the Supreme Court dealing with the scope of Section 9 of CPC with reference to several enactments.

14. In Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, the Three Judges Bench had elaborately considered

various decisions of the Supreme Court, particularly the judgments of the Constitution Benches as well as English cases and cases decided by the

Privy Council about the scope of Section 9 of C.P.C. with reference to the several new enactments introduced later on wherein the jurisdiction of

the Civil Court is excluded by providing a separate machinery therein. In the said case even though the Delhi Municipal Corporation Act

specifically excludes the jurisdiction of the Civil Court u/s 347-E and a separate machinery is provided to redress the grievances as against the

action initiated by the authorities, the Supreme Court has again gone to the extent of holding that the jurisdiction of the Civil Court could not be

ousted in all circumstances. After referring various earlier decisions the learned Judges have concluded,

25. In spite of the bar placed on the power of the Court, orders passed under such statutes can be examined on "jurisdictional question". To

illustrate: a special machinery has been provided for removal of the encroachments from "public land" under different enactments in different States

and the jurisdiction of the Court has been barred in respect of the orders passed by such special tribunals or authorities constituted under such

Acts. Still a suit will be maintainable before a court on a plea that the land in question shall not be deemed to be a public land within the meaning of

the definition of "public land" given in the Act in question, and as such provisions thereof shall not be applicable.

15. In Saraswati and Others Vs. Lachanna (Dead) through Lrs., , which is also a Three Judges Bench decision after following the earlier decision

reported in Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, has held in para 7,

7. When a particular Act creates a right and also provides a forum for enforcement of such right and bars the jurisdiction of the civil court then

ouster of the civil court jurisdiction has to be upheld. But the situation will be different where the statute neither creates the right in question nor

provides any remedy or- having created any right or liability no forum for adjudication of any dispute arising out of such right or liability is provided.

In such a situation, the ouster of the civil court's jurisdiction is not to be easily inferred....

16. In *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, Constitution Bench of the Supreme Court has held that a provision which seeks to

exclude the jurisdiction of the Courts should be construed strictly. Otherwise, in the absence of any such enactment or provision, the exclusion of

jurisdiction does not arise.

17. In the case of *Most. Rev. P.M.A. Metropolitan and others, etc. etc. Vs. Moran Mar Marthoma and another etc. etc.*, in paragraph 29 the

learned Judges have interpreted the term "Civil Nature" as found in Section 9 C.P.C. as wider than the word "Civil Proceeding" and further held

that Section 9 would be available in every case where the dispute is the characteristic of affecting one's right is not only civil, but of civil nature.

18. In the case of *Dr M. Ismail Fraugui and Others Vs. Union of India (UOI) and Others*, which is rendered by a Constitution Bench consisting of

5 learned Judges arising out of special reference made by the President of India under Article 143 of the Constitution relating to Ayodhya Act,

1993. Their Lordships have held that though extinction of judicial remedy for resolution of dispute amount to negation of Rule of Law, abatement

of all pending suits without providing an alternative forum is held as bad in law.

19. In *Mafatlal Industries Ltd. and Others Vs. Union of India (UOI) and Others*, which is also a judgment delivered by the Constitution Bench

consisting of 9 learned Judges. In that decision their Lordships have held, where refund of excise or customs duty is levied on the ground that the

levy is unconditional as per the Customs Act suit or writ petition would be maintained. Their Lordships have further held that Civil Court can

entertain a suit if a decision is nullity or ultravires or without jurisdiction. The scope of Section 9 and other decisions are discussed elaborately by

their Lordships.

20. In *Gurbax Singh v. Financial Commissioner*, 1991 Supp.(I) S.C.C. 167 it is observed that despite the bar on civil Court's jurisdiction under a

statute, if the authority acts under ultravires, the Civil Court could interfere and set the matters right.

21. In *Krishan Lal Vs. State of Jammu & Kashmir*, it is held that when an order is in violation of mandatory provision of a statute, civil court could interfere.

22. In *M.P. Electricity Board, Jabalpur Vs. M/s. Vijaya Timber Co.*, it is held that normal rule is that the civil Courts have jurisdiction to try all suits

of civil nature and exclusion of jurisdiction cannot be readily inferred.

23. In *S. Vanathan Muthuraja Vs. Ramalingam alias Krishnamurthy Gurukkal and Others*, their Lordships have held that the presumption is in

favour of the existence of the jurisdiction and exclusion thereof is an exception.

As regards the declaration of community status is concerned, so far, there is no enactment as made by providing machinery and as such exclusion

of the jurisdiction of the Civil Court does not arise.

24. It is also useful to refer the recent decision of Supreme Court reported in *R. Kandasamy Vs. Chief Engineer, Madras Port Trust*, . In respect

of the community certificates issued by various Tahsildars, the Government of Tamil Nadu issued certain clarification in the form of a Government

Order. The same was considered by the Supreme Court in that decision. The conclusion of their Lordships is very relevant, they are,

4. We have heard learned counsel for the patties and perused the record. Para 4 of the GO.MS.No.2137 dated 11.11.1989 reads thus:

The Government directs that the Community Certificates in respect of all communities included in the list of Scheduled Tribes, for the purpose of

appointments in public services under the Central and State Governments, Public Sector Undertakings, quasi-Government institutions, Banks etc.,

shall hereafter, be issued only by the Revenue Divisional Officers.

5. On a doubt being raised regarding the validity of certificates issued by the Tahsildar prior to 11.11.1989 the Joint Secretary to the Government

of Tamil Nadu on 3.4.1991 informed the Collectors of various districts in Tamil Nadu that ""the permanent Community Certificate issued to

Scheduled Tribes by Tahsildars upto 11.11.1989 is valid."" This communication had been placed on record in the High Court. From a combined

reading of GOMs.No.2137 dated 11.11.1989 and letter of the Joint Secretary dated 3.4.1991. (supra) it follows that whereas a Community

Certificate after 11.11.1989 is required to be issued by the Revenue Divisional Officer, but the Community Certificate issued by the Tahsildar prior

to 11.11.1989 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 11.11.1989.

It is clear from the communication of the State Government that after 11.11.1989 Revenue Divisional Officer alone has competent to issue

community certificate in respect of Scheduled Tribes. Based on the clarification issued by the Government of Tamil Nadu the Supreme Court has

clarified that the community certificate issued by the Tahsildar prior to 11.11.1989 are valid. In our cases I have already stated that in the first case

community certificate was issued by the Tahsildar on 1.2.1980 and in the other case on 31.5.1968 i.e., well before the said date. In the above

factual position and in view of the clarification made by their Lordships in the above referred decision the only contention of the appellants is liable

to be rejected.

25. Even on merits the respondents/plaintiffs produced several documents in the form of sale deeds, school certificates, community certificate of

their relatives as well as oral evidence of elders in support of their claim. By analysing the oral and documentary evidence after accepting the claim

of the plaintiffs, the trial Court has granted decree as prayed for and the lower appellate Court on appreciation of the entire evidence affirmed the

said conclusion. I am in agreement with the factual conclusion arrived at by the Courts below and I do not find any reason to interfere with the

concurrent findings of the Courts below.

26. Under these circumstances, the substantial question of law framed is answered in the negative and both the second appeals are dismissed. No

costs. Consequently, connected CMPs., are also dismissed.