

(2000) 07 MAD CK 0031
In the Madras High Court
Case No : S.A.No. 1101 of 1998

The State of Tamil Nadu and 2 others

APPELLANT

Vs

K. Navamani

RESPONDENT

Date of Decision : 12-07-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 341(2), 342, 366(24), 366(25)

Citation : (2000) 3 CTC 273

Hon'ble Judges : A. Raman, J

Bench : Single Bench

Advocate : Mr. B. Mani, Government Advocate Criminal Side, for the Appellant;
Mr. S.V. Jayaraman, for Mr. Kumarasamy, for the Respondent

Judgement

1. The plaintiff filed a suit before the District Munsif Erode, for a declaration and injunction.

2. The case of the plaintiff is that the plaintiff belongs to Kattu Naicken community, which is a scheduled tribe. The Revenue authorities. Erode,

after enquiry issued a certificate to that effect. The plaintiff finished his school education at Erode and joined Chickia Naicker College, where he

finished his graduation. Throughout, the plaintiff has been residing only in Erode and has disclosed Erode as the place of his permanent residence.

When the plaintiff applied for permanent certificate, the plaintiff was directed to approach the revenue authorities in Madurai District viz.,

Periakulam Taluks, and obtain the same. Therefore, the suit is filed by the plaintiff for a declaration that he belongs to Hindu Kattu Naicken

Community and that for a mandatory injunction, requiring the respondents to issue permanent certificate without requiring the plaintiff to approach

the revenue authorities in Periakulam Taluk.

3. The suit was decreed by the trial court and on appeal, the same was confirmed by the appellate Judge. The State has preferred this appeal,

aggrieved by the decision of the courts below.

4. Learned counsel appearing for the appellant relying the decision of the Apex Court reported in *The State of Tamil Nadu others v. A. Gurusamy*,

1996 (2) L.W. 686 submitted that the jurisdiction of the Civil Court is ousted and therefore, the suit is not maintainable. Hence, the suit is liable to

be dismissed.

5. A perusal of the said judgment shows that it is held then that the declaration of the President of India under Article-341 and 342 of the

Constitution, with respect of Lists of the Schedule and Schedules Tribes in relation to State, that a particular caste or tribe is defined in Article 366

(24) and (25) respectively, is conclusive subject to an amendment by the Parliament under Article 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 stand prohibited.

6. Therefore, a reading of the Judgment only shows that when a suit is filed which in effect questions the declaration, then such a suit would be

barred. Here, it is not in dispute that a certificate has been issued under Ex.A. 1 stating that the petitioner belongs to Kattu Naicken Community.

This community certificate was issued on 8.7.1985. It is further stated in the said certificate that Kattu Naicken community is a scheduled tribe.

The other documents produced by the plaintiff also show that the plaintiff belongs to Kattu Naicken Community. The suit is not filed by the plaintiff

for any relief to include the Kattu Naicken Community in the list of the Presidential Proclamation or to delete any particular community from the list.

The only point was whether the plaintiff has to approach the Revenue Authorities at Periakulam Taluk or the authorities at Erode for the issuance of

certificate. The plaintiff has been asked by the defendant to approach the authorities at Periakulam for the issuance of necessary certificate. But,

according to the plaintiff, he has shifted his resident long back and ever since Erode has become his place of permanent abode and that he is

ordinarily residing only at Erode and therefore, it is only the authorities in Erode who are competent to issue the Certificate.

7. The Apex Court has held in the decision reported in Union of India and Others Vs. Dudh Nath Prasad, , while defining the concept of Domicile,

have observed as follows:-

It becomes clear that a person, before he can be said to be ordinarily residing at a particular place, has to have an intention to stay at that place for

a considerably long time. It would not include a flying visit on a short or casual presence at that place. Since the parents of the respondent were

admittedly residing in District Howrah for more than 30 years, they would be treated to be ordinarily residing in that District and the mere fact that

they held some property in village in District Siwan in the State of Bihar would not affect their status. In determining the question of ordinarily

residence of a person the concept of domicile as understood in private international law cannot be impartial. Etymologically, residence and domicile

carry the same meaning, inasmuch as both refer to the permanent home but under Private International Law, domicile carries a little different cone

and exhibits many facets. In spite of having a permanent home, a person may have a commercial, a political or forensic domicile. Domicile may also

take many colours.

8. Therefore, applying the principles laid down by the Supreme Court, if we consider the contention of the plaintiff, it would follow that the plaintiff

has been ordinarily residing only at Erode, which he has accepted as his permanent place of residence and abode and thus he is domiciled at

Erode. It is not disputed by the authorities when the plaintiff states that he has been living for over number of years, having had his school education

and graduation, in the schools and College at Erode. Therefore, when the plaintiff has been ordinarily residing at Erode, it must be treated as the

place of his permanent residence and hence, it is only the Revenue authorities at Erode, who are the persons competent to consider the application

of the plaintiff and grant necessary certificate.

9. The decision of the Apex Court relied upon by the learned counsel for the appellants cannot apply to the facts of the case. In fact, a single Judge

of this Court has held in the decision reported in A. Mohandoss v. Revenue Divisional Officer. Madurai, 1999 A.I.H 3597 that there is no

provision of law in any enactment or the government order prohibiting the cognizance of a case by a civil court with reference to the declaration of

a person that he belongs to a particular community. So also in yet another decision, State of Tamil Nadu and two others Vs. Durairaj and another,

the same view has been taken by this Court, holding that such a suit is maintainable in a civil court and the decision of the Supreme Court would

apply only where the relief is asked for with reference to inclusion or exclusion of a particular community in the list. Hence, it follows that the suit is

maintainable.

10. The learned counsel for the appellants did not urge any point for consideration on the question of fact, since this being a second appeal where

there are concurrent findings of the courts below on the questions of fact, there is no scope for reconsideration of the same by this Court.

11. In the result, this appeal is dismissed, but in the circumstances, there is no order as to cost.