



CRP.No. 2354 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 14.07.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 2354 of 2023

and

Civil Miscellaneous Petition No. 14532 of 2023

1. H.B. Arjunan
2. R. Sivakumar

...Petitioners

Versus

1. B. Chandran
2. R. Ravi
3. The Sub Divisional Magistrate
Cum Sub Collector
Udhagamandalam, The Nilgiris.
4. The Sub Divisional Magistrate
– Cum- Revenue Divisional Officer
Udhagamandalam, The Nilgiris.
5. The District Collector
Udhagamandalam, The Nilgiris.
6. R. Nanjundan

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.06.2023 passed by the Subordinate Judge, Udhagamandalam in I.A.No. 3 of 2023 in O.S.No. 210 of 2022.



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For Petitioners : M/s. Siva and Sesu Associates
For Respondents : Mr. P. Haribabu

ORDER

This Civil Revision Petition has been filed challenging the order dated 15.06.2023 passed by the learned Subordinate Judge, Udagamandalam, in I.A.No. 3 of 2023 in O.S.No. 210 of 2022 and to set aside the same.

2. The revision petitioners are the plaintiffs and the respondents are the defendants in the original suit.

3. The revision petitioners/plaintiffs filed the suit in O.S.No. 210 of 2022 before the Subordinate Court, Udhagamandalam, for declaration to declare that Doddamanai House was the one established by the predecessors of the Badaga community for conducting various religious rites and festival; to declare that the orders passed by the respondents 3 and 4 on 30.07.2021 and 05.03.2022 respectively are contrary to the religious and cultural customs followed by the Badaga community; to restrain the defendants 3 to 5 and their subordinates or staff from in any manner from interfering with the traditional and customs followed by the Badaga community in the



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Doddamanai House and for costs.

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4. According to the plaintiffs, there are 350 Villages in Nilgiris Districts which follow the religious rites, customs and traditions practiced by the Badaga community from time immemorial. It is stated that until 2020, the first defendant was the head of the Village, however, since his activities are detrimental to the age old customs and religious rites, the Villages have chosen the first plaintiff as the head of the Village. From then on, there were same rivalry, due to which the plaintiffs could not carry on their traditional way of worship and other forms of rituals. Therefore, they have filed the suit for the relief as mentioned supra.

5. The suit was resisted by the first and second defendants by filing written statement.

6. The defendant denies the averments stated in Paragraph Nos. 4 & 5 of the plaint. It is further submitted that the second plaintiff being the son-in-law of Chinn Coonoor (Natta Makka), as such he has no right to represent behalf of Chinnacoonoor Eight Village People. It is rightly given



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in the plaint due to Panchayat Election held in 2019, was the reason for all disputes in ChinnacCoonoor Village. The second plaintiff (Mr.Sivakumar) nominated his wife for the post of Panchayat President of Kadanadu Panchayat as independent candidate, at that time the second defendant being the member of AIADMK party, supported the candidate who contested in the said election for the same post (Panchayat President). In that election the candidate nominated by AIADMK party won the election after strong contest. By way of showing their hatred, the second plaintiff with his supporters threatened the second defendant with dire consequence at the time of election canvass. In spite of second plaintiff threat the second defendant worked in the said election. For taking revenge for the said incident the second plaintiff and his supporter of the said ChinnacCoonoor Village attacked the second defendant and insisted the village head man (1st defendant) to ostracize the second defendant from village. The same was not accepted by the first defendant at that time. Hence, the group of people in the head of second plaintiff created unwanted problem and made the first defendant away from his post (Village Headman). The behaviour and manner which the second plaintiff acted in the Village was not accepted by the majority people of ChinnacCoonoor. After that the group Head by the



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second defendant elected the first plaintiff as village Head man arbitrarily without the consent of majority people of ChinnacCoonoor. The first plaintiff and the second plaintiff made a group in ChinnacCoonoor village and ostracize the families who are question their activity, which is against Badaga culture. Finally they ostracize 150 families out of 304 families. In 150 families includes hatty makka, natta makka and Badaga thoriyar. As such the hatty makka is divided into two groups and the first plaintiff with support of second plaintiff formed a group and elected the first plaintiff as Head man to their group and alleging they are representing the entire ChinnacCoonoor people including the Natta Makka. The first plaintiff started to threaten the peoples not to participate in the festival held at ChinnaCoonoor since they are ostracize from village. The said issue was taken to Naaku Betta (head of Badaga community, headed with 436 village representative) for compromising the said issue. The Naaku Betta people made various attempt to resolve the issue, but the first and second plaintiffs and their supporters not accepted the said compromise. Finally without any other option, the matter was taken to Revenue Divisional Officer, Udhagamandalam. The Revenue Divisional Officer passed order stated in the plaint after conducting many enquiry and peace committee among the



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two groups (A and B). Subsequently the plaintiffs refused to accept the order passed by the third defendant. Then the said matter was taken by this Court. This Court pleased to order the Superintendent of Police, The Nilgiris District to implement the order passed by the third defendant (The Revenue Divisional Officer, Udthagamandalam) within three months from the date of order. The plaintiff filed this suit by suppressing the material facts and sought declaration against the defendants 3 to 5. There are groups in ChinnacCoonor eight village as already stated above one is “A” party and one is “B” party as such there is dispute regarding performing pooja in all temples including the Doddamani. The “B” party people requested that they are ready to perform pooja in all temples with the guidance of “A” party. But the “A” not accepted the same for the reason well known to them. It is further submitted that the “B” party people are also Badaga and Hatty makka, as such they are also have right to perform pooja in all temples including Doddamani. But the plaintiff is not allowing them to perform pooja since they are ostracizing from village.

7. The contention of the petitioners/plaintiffs in the suit is that the Doddamanai is an ancestral house where religious rituals will be practiced



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therein are almost similar to all the Badugar villages and the proposed witness Dr.R.K.Haldorai is belonged to Badugar community and he is having wide experience in respect of social practices followed by the Badugar community and he authored 13 books, out of which 2 books were awarded for best book by the Government of Tamil Nadu and another one proposed witness S.Raju, he is a permanent resident of Chinnacoonoor village, his grand father late Andi Gowder was village Karnam of the Chinna Coonoor. Therefore, his family has directly or indirectly involved in the day to day affairs of the Chinnacoonoor Village. Hence, the nature of the suit, the petitioners/plaintiffs request to permit the above two witnesses before the examination of the present petitioners/plaintiffs.

8. Regarding the averments stated in Paragraph Nos. 2 and 3 of the plaint, this defendant denies the said averment except that the first defendant severed as village Head man more than 20 years. The defendants further states that the Dodda Manai is common for all the people since the same was constructed in the common fund of ChinnacCoonoor eight village. Formerly (Before many decades) the ancestors who are resided in the said village used to select one of the houses in the said village as Doddamanai. After



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civilization the people of village constructed the Doddamanai by collecting the fund from entire village (ooru vari). It is further submitted that as there are a number of funds collected from ChinnacCoonoor eight Village people for various purpose (i.e.,three village fund for constructing common building for said three villages). Ultimately, the present Doddamanai was built in common fund which was contributed by ChinnacCoonoor eight village people, to evidencing the same people of “A” group deposed before the Revenue Divisional Officer also speaks about the same. It is further submitted that the people who was called as Hatti Makka are only entitled to perform the Pooja in Doddamanai except performing Pooja, other rituals are conducting by all the people of ChinnacCoonoor Eight Village to assist the Hatty Makka. All other people like Natta Makka have right to worship in the said Doddamanai. In addition to that the Doddamanai was a house to keep the idols of God and other related things which are used to perform Pooja. So, there is no question of worshipping the Doddamanai by only Hatty Makka. All the people of the ChinnacCoonoor are having right to enter into Doddamanai and worship. It is further submitted that at no point of time, the first defendant disappointed for taking him from the post of Village Head man as alleged in the plaint.



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9. Counter affidavit has been filed by the first respondent and adopted by the second respondent before the Court below stating that he has denied all the averments made in the affidavit that the said Dr.K.Haldurai belongs to other village not being the member of Chinnacoonoor and he was not known about the culture followed in Chinnacoonoor. The plaintiffs being the author of the case, they have to explain their case without any lacuna. The books written by the said Dr.K.Haldurai was not accepted by the Badugar community. It is submitted after enquiring the plaintiffs, they can enquiry any witness is the desire. Enquiring the persons not connected with the case was severely damaged the object of the case. However, the petitioners/plaintiffs have not produced any documents to support their averments. Hence, prayed that the above Revision is liable to be dismissed.

10. On the other hand, it is seen that the respondents had opposed only in respect of competence of the above two witnesses. But, they had not raised any objection whether the petitioners have any merits to examine the above said witness before the examination of this petitioners/plaintiffs. Considering the plaint as well as the written statement, the following issues were framed in respect of customs and usage followed by the Badugar



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community and also Chinnacoonoor:-

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- (i) படுக தொரையர் என்பது படுகர் சமுதாயத்தின் பிரிவுகளில் ஒரு சமுதாயமா?
- (ii). படுக தொரையர் மக்கள் சின்னக்குன்னூர் மற்றும் இதர படுக கிராமங்களில் நடைபெறும் சமய சடங்குகளில் படுக சமுதாய மக்களுடன் இணைந்து பங்கு பெற்றார்களா?
- (iii). “தொட்டமநெ” என்பது குறிப்பிட்ட ஊரினை நிறுவிய முத்தாயர் கட்டிய முதல் வீடா? அல்லது மேற்படி வீடு படுகர் மற்றும் தொரையர் சமுதாய மக்களிடம் இருந்து வரி மூலம் பணம் வசூலித்து கட்டப்பட்டதா?
- (iv). “தொட்டமநெ”-ல் பூஜையை தவிர இதர சடங்குகள் அனைத்து தரப்பினர்களாலும் செய்யப்படும் என்பது உண்மையா?.

11. On a perusal of the records, it reveals that the suit has been filed by the petitioners/plaintiffs for declaration and permanent injunction. The petitioners/plaintiffs have stated that Doddamanai house was constructed by common ancestors of the above said Village, that house is being used for worship and except descendance of the common ancestors of the above said village, no one will be permitted to enter the above said Doddamanai to perform Poojaas. Further, the petitioners want to examine the proposed witnesses, namely, Dr. K.Haldurai and S.Raju, to prove the customs and usage prevailed in the Chinnacoonoor Village and also Badugar community. During the examination of the petitioners/plaintiffs, the veracity of the plaintiffs can be tested by the respondents through cross-examination. If there is any dispute between the parties, thereafter, the petitioners can prove



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the disputed customs prevailed in the Chinnacoonoor village and also Badaga community.

12. To permit the petitioners for examining the private witness before the examination of parties of the suit under Order 18 Rule 3(A) of CPC is only discretionary power of this Court, the petitioners did not aver any specific reason for examining the above said witnesses before the parties in the suit. Though, the suit is filed by a representative capacity, the petitioners are not entitled to examine the above said witnesses before examined the plaintiffs. Therefore, the petitioners are directed to examine themselves at the first instance and thereafter, they can examine any other witness to prove the customs prevailed in the Chinnacoonoor Village.

13. It is also seen that there are 350 Villages in Nilgiris District, which follow the religious rites, customs and traditions practiced by the Badaga community from time immemorial. It is stated that until the year 2020, the 1st respondent / 1st defendant was the head of the Village, however, since his activities are detrimental to the age old customs and religious rites, the Villages have chosen the 1st petitioner / 1st plaintiff as the head of the



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Village. From then on, there were some rivalry due to which the petitioners / plaintiffs was unable to perform their traditional way of worship and other forms of rituals. In fact, Baduga community live in Villages called Hatti and rituals and poojas are distinct from other communities. The customs and practices of the entire Baduga community are unique in nature and the issue on hand can be decided only after the completion of trial. The prayer of the petitioners / plaintiffs to examine two witnesses, namely, Dr.R.K.Haldorai and other person, namely, S.Raju, as their witnesses was considered and rejected by the court below stating that they cannot be examined at first instance and can be examined at later point of time, if required, is challenged before this Court. This Court is of the view that the evidences of said Dr.R.K.Haldorai and S.Raju may be necessary to arrive at a conclusion regarding the issue on hand, i.e., customs and other rituals prevailing from time immemorial. The said witnesses can be examined after the petitioners / plaintiffs and the respondents / defendants' side evidence. Since the evidence of Dr.R.K.Haldorai and S.Raju, are expert witnesses, they can be examined as and when required by the court below for any clarification also and the same may not cause any prejudice to the parties concerned or their evidences. Therefore, there is no necessity to interfere with the order passed



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by the court below, the said two witnesses, viz., Dr.R.K.Haldorai, S.Raju can be examined as court witnesses and the order of the trial court passed in I.A.No.3 of 2023 dated 15.06.2023 is modified only to that extent.

14. Accordingly, this Civil Revision Petition is disposed of. The plaintiffs are at liberty to be examined and cross examined by the defendants at the first instance, and at the second instance, the defendants to be examined and cross examined by the plaintiffs, and thereafter, the said two witnesses can be examined to prove their stand in the above case. The petitioners / plaintiffs and the respondents / defendants are at liberty to cross examine the said expert witnesses i.e. Dr.K.Haldorai and S.Raju. The Court below is directed to complete the entire trial proceedings as expeditiously as possible and to dispose of the said suit within a period of four months from the date of receipt of copy of this order.

14.07.2023

Index : Yes/No
Internet : Yes/No
MSM/ ssd



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To
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1. The Subordinate Judge, Udagamandalam,
The Nilgiris.
2. The Sub Divisional Magistrate
Cum Sub Collector, Udhagamandalam, The Nilgiris.
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V. BHAVANI SUBBAROYAN, J

MSM

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