

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

S.A.No.2196 of 2004

G.Ramaswamy

..Appellant/Plaintiff

Vs.

1. The District Collector,
Salem District, Salem.

2. The Revenue Divisional Officer,
Mettur, Salem District.

3. The Tahsildar,
Omalar Taluk, Salem District.

..Respondents/Defendants

Prayer:

Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 31.10.1994, on the file of the Court of the Subordinate Judge at Sankari, made in A.S.No.72 of 1992, reversing the judgment and decree dated 22.10.1991 on the file of the District Munsif, Mettur, made in O.S.No.848 of 1985.

For Appellants : Mr.M.A.Abdul Wahab
for Mr.K.V.Subramanian

For Respondents : Mr.M.Sricharan Rangarajan
Special Government Pleader
(Civil Suits)

JUDGMENT

The present Second Appeal has been preferred against the judgment and decree passed in A.S.No.72 of 1992, reversing the judgment and decree passed in O.S.No.848 of 1985.

2.The parties are referred as per the ranking in the Trial Court.

3.The plaintiff filed a suit for a declaration to declare that the plaintiff belongs to Konda Reddy Community for the purpose of securing public employment in Government service. The contention of the plaintiff before the Trial Court was that the Konda Reddy Community is classified as Scheduled Tribe and the

forefathers of the plaintiff were residing in Pennagaram, Dharmapuri District and thereafter, migrated to Omalur Taluk. The plaintiff also studied in Thopur Village at Dharmapuri District and in respect of that locality, the Community of Konda Reddy was recognized as Scheduled Tribe for the purpose of availing the benefit of reservation for securing public employment. The plaintiff filed documents to show that he belongs to Konda Reddy Community. The Trial Court formulated the issues by stating that whether the defendants had conducted an enquiry properly by following the procedures as contemplated under law or not? Whether the plaintiff is entitled for the relief as such sought for in the suit. In respect of the issues, the Trial Court came to the conclusion that the defendants had not followed the procedures as contemplated and prescribed under the various Government orders. The Trial Court arrived a conclusion that the defendants had not conducted an enquiry in an appropriate manner and erroneously rejected the claim of the plaintiff for grant of Community certificate as the plaintiff belongs to Konda Reddy Community.

4. On a perusal of the judgment and decree passed by the Trial Court, it is found that the procedures as contemplated for conduct of an enquiry by the defendants had not been followed. On this ground, the Trial Court answered the issues in favour of the plaintiff. The plaintiff marked 12 documents in relation to his educational certificates and the memo issued by the Tamil Nadu Public Service Commission and the selection of the plaintiff for Government services, 5 witnesses were also examined by the plaintiff to establish that the forefathers of the plaintiff were residing in Dharmapuri District and accordingly, he belongs to Konda Reddy Community, which is qualified as Scheduled Tribe.

5. The defendants contested the suit by stating that the contentions raised by the plaintiff were erroneous and there is no such community was in existence in the place, where the plaintiff was residing. To establish this, the defendants also filed 15 documents with reference to the relatives and other persons, who was studying in the School in that particular locality. The admission Registers of the persons, who studied in the Schools in the particular locality were marked as Ex.B7 to B15. All those documents are in relation to the admissions granted to the candidates in the School in that particular locality. The defendants preferred First Appeal in A.S.No.72 of 1992, questioning the judgment and decree in O.S.No.848 of 1985. The First Appellate Court also formulated an issue by stating that whether the plaintiff belongs to the Konda Reddy Community or not? The First Appellate Court independently considered the

documents marked by the respective parties before the Trial Court and the depositions of the witnesses produced by the respective parties to the suit. The First Appellate Court raised certain documents in respect of the genuinity of the documents marked by the plaintiff. The First Appellate Court, more specifically, not trusted the documents filed in respect of the properties belongs to the plaintiff and arrived a conclusion by stating that in property documents, the name of the Community will not be normally entered. However, in respect of the documents produced by the plaintiff, name of the Community is mentioned, which cannot be trusted upon. All those documents produced by the plaintiff, the First Appellate Court was of an opinion that in an unusual manner, the name of the Community has been entered in the documents, which cannot be relied upon for the purpose of granting declaration of the Community. When the documents are not in a prescribed manner and unusually, the name of the Community has been entered upon, then the said document cannot be relied upon for the purpose of granting the relief as such sought for in the suit. By drawing an inference in respect of the documents marked by the plaintiff, the First Appellate Court arrived a conclusion that the plaintiff had not established the Community and accordingly, reversed the judgment and decree passed by the Trial Court. The First Appellate Court mainly relied upon the deposition of the mother-in-law of the plaintiff, who deposed that they belong to Reddy Community, which is an upper caste. Heavily relying upon the said depositions, the First Appellate Court came to the conclusion that the plaintiff has filed the suit for the purpose of securing a public employment and by wrongly availing the benefit of reservation provided for the benefit of the Scheduled Tribe people. When the mother-in-law of the plaintiff herself deposed that they belonged to Reddy Community and the documents marked by the plaintiff has not in consonance with the procedures as contemplated for the issuance of documents, the First Appellate Court has reversed the judgment and decree passed by the Trial Court.

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6.Challenging the judgment and decree of the First Appellate Court, the present Second Appeal has been filed. At the time of admission of the Second Appeal, the following question of law was framed and the same is extracted hereunder:

"(i) The Court below is right in rejecting the transfer certificate of the appellant when there is no pleading or proof by the respondents that the transfer certificate was tampered?

(ii) Whether the Court below is right in rejecting Exs.A-3 and A-1 without any reason whatsoever merely on the ground of finding the appellant's mother-in-law does

not belong to Konda Reddy Community?

(iii) Whether the Court below is right in relying upon the documents, which were not proved as per the Evidence Act especially when the provisions of the documents were not examined by the propounders?

(iv) Whether the Court below is right in taking on adverse inference from the caste of the mother-in-law of the appellant?"

7. In respect of the transfer certificate submitted by the appellant, it is contended by the plaintiff that there is no proof to show that the plaintiff had tampered the transfer certificate issued by the competent authorities of the School. In the absence of any such tampering, the First Appellate Court ought to have relied upon the said transfer certificate issued in respect of the Community of the plaintiff. This apart, the Trial Court blanketly relied upon the documents marked by the plaintiff side. Contrarily, the First Appellate Court had gone deep into the documents and found the manner in which such documents were dealt with and arrived a conclusion that in an unusual manner, the name of the Community has been mentioned in those certificates, which will not be found in ordinary circumstances in similar documents.

8. Apart from the issues raised before the Trial Court as well as before the First Appellate Court, and beyond the issues adjudicated by the Trial Court as well as by the First Appellate Court, this Court has to consider the scope of the suit itself. The suit is for declaration to declare that the plaintiff belongs to Konda Reddy Community, which is classified as Scheduled Tribe. Undoubtedly, the plaintiff was selected and appointed into Government Service under the Scheduled Tribe Quota. It is informed by the learned counsel for the appellant in the Second Appeal that the plaintiff is serving in Government Department. Under these circumstances, the plaintiff was constrained to move a Civil Suit for declaration. Even as per the Government orders, which were marked as documents before the Trial Court, the District Level Committee as well as the State Level Scrutiny Committee has been constituted for the purpose of conducting an enquiry in respect of grant of Community certificate with reference to the Scheduled Castes and Scheduled Tribes. When the Special committees are constituted, both at the District Level and at the State level, the Government servants, who are employed by availing the reservation under the Scheduled Tribes and Scheduled Caste Community are bound to approach the District Level Committee and thereafter to the State Level Scrutiny Committee for the purpose of establishing their genuinity or otherwise of the Community certificate obtained by them through the Tahsildar concerned. Even in respect of the Scheduled Caste and Scheduled Tribes, the Tahsildar are

incompetent to issue Community certificates. Thus, all such Community certificates are to be initially authenticated by the District Level Committee and thereafter, the issues are to be enquired into and adjudicated by the State Level Scrutiny Committee constituted for the purpose of affirming validity and genuinity of the Community certificates in respect of Scheduled Caste and Scheduled Tribes. Thus, the institution of the Civil Suit by the plaintiff itself is improper. The plaintiff being a Government employee has to approach the District Level Committee and thereafter, before the State Level Scrutiny Committee for the purpose of establishing the genuinity of his Community certificate obtained as Konda Reddy Community.

9. Admittedly, the plaintiff has not approached the State Level Scrutiny Committee for the purpose of validating his Community Certificate issued by the original authority. The Civil Courts even as per the Government orders are incompetent to conduct an enquiry in respect of grant of Community Certificates, more specifically to the Scheduled Tribes.

10. In this view of the matter, this Court is of an opinion that the appellant is at liberty to approach the State Level Scrutiny Committee for the purpose of establishing the genuinity of his Community certificate issued by the original authority.

11. In the event of approaching the State Level Scrutiny Committee by the plaintiff, the Committee is bound to conduct an enquiry independently by scrutinizing the documents and evidences produced by the plaintiff to establish his Community Certificates issued by the original authority and decide the issues independently without reference to the observations made in the Second Appeal.

12. Thus, the judgment and decree passed in A.S.No.72 of 1992 is in accord with law and there is no infirmity and perversity as such, so as to interfere by this Court in the present Second Appeal.

13. Accordingly, the judgment and decree dated 31.10.1994 passed in A.S.No.72 of 1992 on the file of the Court of the Subordinate Judge at Sankari, reversing the judgment and decree dated 22.10.1991 in O.S.No.848 of 1985 on the file of the District Munsif, Mettur, stands confirmed and the Second Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Sankari.
2. The District Musif,
Mettur.
3. The District Collector,
Salem District, Salem.
4. The Revenue Divisional Officer,
Mettur, Salem District.
5. The Tahsildar,
Omalar Taluk, Salem District.
6. The Secretary,
State Level Scrutiny Committee,
Salem.

Copy To:-

The Section Officer
VR Section, High Court
Madras. (2 Copies)

+1cc to Mr.K.V.Subramanian, Advocate, S.R.No.80373
+1cc to the Government Pleader, S.R.No.79752

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NRI (CO)
CS/21/01/2019

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