



Second Appeal No.17 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.17 of 2019
and C.M.P.Nos.267 and 268 of 2019

Sadakula Telungar Sangam
Represented by its President
J.Palani, S/o Jayaraman

.... Appellant

-Vs-

1.Mount Saint Joseph Convent
represented by its Mother Superior
Avalurpetti Road, Tiruvannamalai.

2.14 Villages Sadakula Telungar Naicker Sangam
represented by its President, K.S.Mani
14, Big Street, Tiruvannamalai.

3.Secretary G.Gopalakrishnan
Mallavadi Village, Tiruvannamalai Taluk.

4.K.Soundarajan

5.K.Dhanapal

6.B.Ponnurangam

7.R.Adhimoolam

8.G.Subramani

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 10.08.2018 made in A.S.No.11 of 2017 on the file of the learned



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Sessions and Mahila Fast Track Court confirming the judgment and decree dated 01.11.2012 made in O.S.No.186 of 2002 on the file of the learned Principal Subordinate Judge, Tiruvannamalai.

For Appellants	: Mr.D.Ravichander
For Respondents	: Mr.Godson Swaminathan for M/s.Isaac Chambers - for R1 Mr.P.Dinesh Kumar - for RR 2 and 3 Mr.R.Maheswari - for R6 R4 - Not ready in notice R5, 7 and 8 - Served, no appearance

J U D G M E N T

This is a very unfortunate case languishing in the Courts litigating over the rights of a community over the suit schedule properties from 1989 onwards.

2. The appellant before me is the plaintiff in the suit. He laid O.S.No.186 of 2002 on the file of the learned Principal Subordinate Judge at Tiruvannamalai. The said suit sought for the relief of declaration that the plaintiff is entitled to manage the suit schedule mentioned properties on behalf of Sadukula Telungar Sangam and for a permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the plaintiff. The plaintiff also sought for an injunction that the defendants 1 and 2 should not encumber the property shown as 'A' Schedule and also sought for recovery of possession of the 'C' Schedule property alienated by the defendants 1 and 2 in



favour of the third defendant.

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3. The suit was presented by the plaintiff claiming that it had been formed for the members of Sadakula Telungars residing in 14 villages around the town of Tiruvannamalai. It would plead that the defendant is also such a Sangam consisting of Sadakula Telungars, but it is an unregistered one.

4. The prior history is as follows:-

The first defendant viz., Ganapathy Naidu, as the President of the Sadakula Telungar Sangam had presented O.S.No.59 of 1989 claiming title over the suit schedule mentioned properties. The said suit came to be decreed by the trial Court. Aggrieved by the same, a regular appeal was preferred before the learned District Judge at Tiruvannamalai and it was taken on file as A.S.No.195 of 1997. The appeal came to be dismissed on 13.10.1998. It is pertinent to note that though the lower appellate Court concurred with the findings of the Court below that the plaintiff/defendant therein does not have exclusive right, title or interest over the property, it granted a declaration that the suit properties belong to Sadakula Telungar Naickers living in all the 14 villages. It also granted a permanent injunction restraining the defendants therein from interfering with the peaceful administration of the Sangam.



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5. Aggrieved by the same, the defendants therein preferred a Second Appeal before this Court in S.A.No.1832 of 1998. This Court, while dismissing the Second Appeal on 06.02.2002, held as follows:

" 9. The Courts below also found that the plaintiff is in possession of the property be leasing it out. The lower appellate Court, after appreciating the evidence, correctly found that all the suit properties are absolute properties of Sadakula Telungar Naickers who are living in 14 villages mentioned in the plaint. On the other hand, the lower appellate Court has not granted the decree as prayed for by the plaintiff/Sangam. The lower appellate Court has not declared that the suit property belongs to the plaintiff/Sangam. So, the plaintiff/Sangam or its members, cannot claim any exclusive right or title to the suit property as the decree passed by the lower appellate Court has become final insofar as the plaintiff/Sangam is concerned. But only, "Sadakula Telungar Naickers" residing in the said 14 villages, are entitled to the said suit properties even if they are members of the plaintiff/Sangam or defendants/Sangams. When such a decree has been passed, I am not able to understand as to how the defendants are aggrieved by the said decree. If the defendants also come within the said qualification, they are also entitled to get the benefit of the decree granted by the lower appellate Court. Even with respect to the decree regarding injunction as decreed by the Courts below, the same cannot operate against the persons who belong to Sadakula Telungu Naickers and residing in any one of the 14 villages as their rights in the suit properties had been approved and declared.



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10. The Courts below have concurrently found that the defendants as Sangams cannot claim absolute right in the properties on the basis that the first defendant/Sangam had succeeded the plaintiff/Sangam in 1982."

6. The effect of the judgment in the above second appeal is that the plaintiff Sangam cannot claim the property as its exclusive property, but its members being Sadakula Telungar Naicker residing in 14 villages in Tiruvannamala. Every person belonging to the said community in those 14 villages are entitled to the said properties. The Court came to the conclusion that it matters not whether they are members of the plaintiff Sangam in O.S.No.59 of 1989 or whether they are members of the defendant Sangams in the said suit. All that it mattered was they must be one belonging to Sadakula Telungar Naickers of the 14 villages.

7. After the pronouncement of the judgment in the Second Appeal, the plaintiff/appellant presented the suit for the aforesaid reliefs. Before the trial Court, an application was moved under Order I Rule 8 of the Civil Procedure Code (CPC) to enable the plaintiff to contest the suit as a representative on behalf of the members of the Sadakula Telungar Naickers residing in 14 villages around Tiruvannamalai. This application was taken out in I.A.No.223 of 2002. It is clear from the publication filed in the records that a notice had been issued



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under Order I Rule 8 in one issue of Dinamalar in Vellore edition dated 17.06.2002. In the meantime, both the plaintiff and the defendant encouraged the Court to go into the evidence. Finally the trial Judge came to a conclusion that since Order I Rule 8 permission had not been granted, the suit deserved a dismissal and dismissed the suit.

8. Aggrieved by the same, the plaintiff preferred A.S.No.11 of 2017. The learned appellate Judge tried this appeal along with other appeals, which had been preferred by the tenants of the property. In and by way of a judgment and decree dated 10.08.2018, he came to the conclusion that the plaintiffs are entitled to represent Sadakula Telungar Naickers residing in 14 villages and allowed the application under Order I Rule 8 of CPC. Consequently, he also allowed the appeal in CMA No.3 of 2017 preferred against the dismissal of the application in I.A.No.223 of 2002.

9. By way of abundant caution, the plaintiff also preferred an application in I.A.No.8 of 2017 in A.S.No.11 of 2017. The learned Judge in Para No.28 of the order made in the said application came to the conclusion that the plaintiff is entitled to represent the community. He found fault with the trial Court for having dismissed the Order I Rule 8 petition at the time of pronouncing of the judgment in the main suit. Having found fault with the trial Court, he also



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committed same error. From a perusal of the original records, it is clear that permission was granted by the Court in C.M.A.No.3 of 2017 as well as in I.A.No.8 of 2017 in A.S.No.11 of 2017 on 10.08.2018. On the same day, the appeals also came to be dismissed.

10. In terms of Order I Rule 8(2) of the Code of Civil Procedure, it is mandatory that when permission is granted to a person to represent the members of a community in terms of Order I Rule 8(1), notice is to be issued to each of the members individually and if that is not an easy task, the Court has the discretion to order publication as a mode of notice to the persons who will be affected if a decree is passed in the suit. Insofar as the orders passed in CMA No.3 of 2017 as well as I.A.No.8 of 2017 are concerned, no revision or further challenge has been made to the same by the defendants or their legal representatives. Therefore, the permission granted by the first appellate Court to the plaintiff has attained finality. As the lower appellate Court had gone into the merits of the case after granting permission under Order I Rule 8 and dismissed the appeal, the present Second Appeal has come before this Court.

11. On 02.01.2019, the Second Appeal was admitted on the following substantial questions of law:

(a) Is the learned District Judge after having upheld that the



representative action initiated by the Plaintiff Sangam is sustainable having regard to fact that the Plaintiff Sangam is suing on behalf of the community, is right in deciding the appeal on merits without following the procedure as per the Order I Rule 8(2) of the CPC?

- (b) Is the learned District Judge right in holding that the present suit in the O.S.No.186 of 2002 is hit by the principles of Res Judicata in view of the decisions in A.S.No.195 of 1997 on the file of the Additional District Judge, Thiruvannamalai and S.A.No.1832 of 1998 on the file of the Hon'ble Court of Madras?
- (c) Having regard to the categorical findings in the A.S.No.195 of 1997 on the file of the Additional District Judge, Thiruvannamalai and S.A.No.1832 of 1998 on the file of Hon'ble High Court of Madras that the Sadukula Telungar Community people of 14 villagers in Tiruvannamalai are the owners of the suit schedule property, is not the suit filed by the plaintiff in O.S.No.186 of 2002 on the file of Principal Subordinate Court, Thiruvannamalai maintainable?
- (d) Is the learned District Judge right in dismissing the suit on the ground of Res Judicata when the present Suit O.S.No.186 of 2002 is filed only as a representative action on behalf of the above community people?
- (e) When the judgment and decree in A.S.No.195 of 1997 on the file of the Additional District Judge, Thiruvannamalai and S.A.No.1832 of 1998 on the file of the Hon'ble High Court of Madras declared that



the Sadukula Telungar Community people of 14 villagers in Tiruvannamalai are the owners of the suit properties in the present suit in O.S.No.186 of 2002 representing the said community hit by Res Judicata?

- (f) Is not the judgment of the district Court vitiated for not ordering notice as mandated under Order 1 Rule 8(2) of CPC in the application I.A.No.8 of 2017 in A.S.No.11 of 2017?

12. On service of notice, the respondents have entered appearance. Mr.Godson Swaminathan entered appearance for the first respondent, Mr.Dinesh Kumar entered appearance for respondents 2 and 3 and Ms.Maheshwari entered appearance for the 6th respondent.

13. I heard Mr.D.Ravichander for the appellant and the other learned counsel for the respondents.

14. Though questions of law have been framed on the merits of the appeal, I am afraid in case I delve into the merits of the case, I will be committing the same error that has been committed by the trial Court as well as the lower appellate Court. When an application under Order I Rule 8 has been allowed, it is mandatory that the Court orders notice in the said application as stated above. I have gone through the records and I feel the trial Court has



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committed an error in dismissing the Order I Rule 8 petition while dismissing the suit and the lower appellate Court committed a slightly different error of allowing the Order I Rule 8 application and immediately dismissing the appeal. The District Court failed to order notice as mandated under Order I Rule 8(2) and therefore the judgment and decree of both the Courts below stand vitiated.

15. Therefore, I would answer only the question of law (a) that has been framed in this appeal. The order granting permission under Order I Rule 8(1) having become final, the next step is ordering publication under Order I Rule 8(2). I would not be ordering publication at the second appellate stage when the parties who will be affected by the order are situated in 14 villages in and around the town of Tiruvannamalai. Answering the first question of law in favour of the appellant, I allow the Second Appeal to the extent that the Courts below have fell in error in not following the mandatory procedure.

16. In fine, the Second Appeal is allowed. Consequently, the judgment and decree dated 10.08.2018 made in A.S.No.11 of 2017 on the file of the learned Additional Sessions and Mahila Fast Track Court and the judgment and decree dated 01.11.2012 made in O.S.No.186 of 2002 on the file of the learned Principal Subordinate Judge, Tiruvannamalai are set aside. The suit in



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O.S.No.186 of 2002 is restored to the file of the learned Principal Subordinate Judge, Tiruvannamalai. The learned Judge is directed to issue notice under Order I Rule 8(2) of CPC, hear objections if any as against the right of the plaintiff to contest the suit and thereafter proceed to record evidence afresh and decide the suit. I make it abundantly clear that the Court shall conduct *de novo* trial into the matter and thereafter come to the conclusion on the basis of the evidence recorded *de novo*. Considering that the suit is of the year 2002, the trial Court is expected to expedite the matter at all stages. Since the appeal is being allowed on a technical point, I am not inclined to impose costs on any party. Consequently, connected miscellaneous petitions are closed.

03.07.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order

KST

- 1.The Principal Subordinate Court
Tiruvannamalai.
- 2.The Additional Judge,
Sessions and Mahila Fast Track Court
Tiruvannamalai.



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V.LAKSHMINARAYANAN, J.

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