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S.A. No.1087 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2025

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.1087 of 2005

1.P.Allimuthu
2.P.Ramamoorthy Gounder
3.A.Krishnan Gounder

... Appellants

Vs

1.V.Kanniyappan
2.P.Sivalingam
3.R.Natarajan
4.T.Govindan president Jagadhap Panchayat
5.P.Chinnaswamy

... Respondents

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree in A.S.No.16 of 2003 on the file of the Principal District Court, Dharmapuri @ Krishnagiri, dated 29.12.2004 confirming the judgement and decree in O.S.No.368 of 1996, on the file of the District Munsif, Krishnagiri, dated 12.09.2002.



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For Appellants : Mrs.V.Srimathi

For Respondents : Mr.V.Nicholas

JUDGMENT

The appellants have filed this Second Appeal against the judgment and decree dated 29.12.2004 in A.S. No. 16 of 2003 on the file of the Principal District Court, Dharmapuri @ Krishnagiri, confirming the judgment and decree in O.S.No.368 of 1996 on the file of the District Munsif, Krishnagiri, dated 12.09.2002.

2. Heard Mrs.V.Srimathi, learned counsel for the appellants, Mr.V.Nicholas, learned counsel appearing for the respondents, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.



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4. The appellants are the plaintiffs in Suit O.S. No. 368 of 1996, filed before the learned District Munsif, Krishnagiri, challenging the concurrent findings rendered by the courts below.

5. Before the trial court, all three appellants, as plaintiffs, filed the said suit seeking a declaration that they hereditarily held the office of Oor Gounder, Manthiri Gounder, and Ori Gounder. They also prayed for a permanent injunction restraining the defendants from interfering in the performance of their duties in an official capacity.

6. The defendants contested the suit, arguing that the plaintiffs were not hereditary holders of the said posts, which were not reserved for a particular Vanniar community. Instead, they claimed that the Oor Gounder was selected democratically by the people of approximately 100 villages in and around Jagadha village. The defendants contended that the plaintiffs were not selected in this manner but falsely claimed hereditary rights to the posts.



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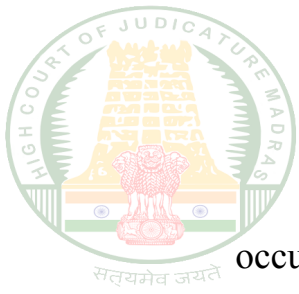
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7. Furthermore, the defendants stated that they were chosen by the village people to perform the Karthigai Theebam festival in 1996. They pointed out that the posts had remained vacant for nearly five years due to disputes between the plaintiffs and the defendants. Therefore, they denied the plaintiffs' claim of hereditary succession.

8. Before the trial court, both parties adduced oral and documentary evidence. On the side of plaintiffs' P.W.1 to P.W.5 were examined, and Exs.A1 to A13 were marked. On the defendants' side, D.W.1 to D.W.7 were examined, and Exs. B1 to B10 were marked.

9. Upon considering the evidence on record, the learned trial judge framed key issues, including "*whether the plaintiffs were entitled to the relief of declaration?*". The court ultimately found that the plaintiffs failed to establish their hereditary claims.

10. The evidence of the first plaintiff clearly revealed that he did not



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occupy the post hereditarily after his father's death, nor had his grandfather held such a position. Similarly, the second plaintiff relied on Ex.A7, a Muchilika allegedly executed by his father for the Mandiri Gounder post. However, this document was found to be fabricated, as evidenced by contradictions in the date of execution and the stamp date. The evidence of PW5 further confirmed its inauthenticity. Thus, the court held that the second plaintiff did not occupy the post hereditarily based on Ex.A7.

11. Regarding the third plaintiff, he also failed to prove that his father had previously occupied the post of Ori Gounder. The plaintiffs' own evidence indicated that they represented the entire community of villages. However, when filing the suit, they claimed to preside over family and temple functions exclusively for the Vanniar community. If they were truly representing all the villages, they should have filed the suit in a representative capacity, which they failed to do. Due to this procedural lapse, the suit was dismissed.

12. Additionally, the trial court observed that the first plaintiff was

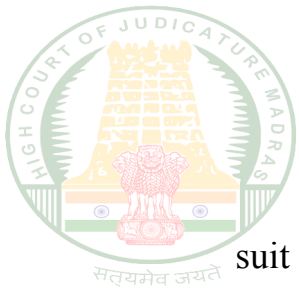


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not only claiming the Oor Gounder post but also the Dharmagatha post of the village temple, which is an entirely independent position. It was further noted that his father had previously made false claims over temple properties amounting to approximately 20 acres. The court concluded that the suit was filed with the ulterior motive of unlawfully acquiring temple properties. Consequently, the plaintiffs were deemed not entitled to any relief, and the suit was dismissed.

13. Challenging these findings, the plaintiffs preferred an appeal in A.S.No.16 of 2003, where the learned first appellate judge independently analyzed the facts and law in detail. The appellate court ultimately upheld the trial court's findings, holding that the plaintiffs failed to establish their hereditary claims. The defendants, on the other hand, successfully proved that the first plaintiff, along with the second and third plaintiffs, had filed the suit to gain wrongful possession of temple properties.

14. The appellate court also noted that the plaintiffs themselves admitted to representing approximately 100 villages. However, since the



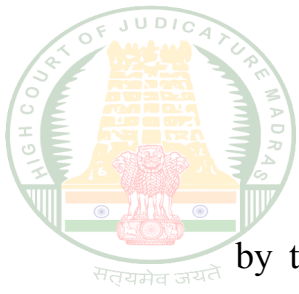
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suit was filed in an individual capacity and not in a representative capacity, it was procedurally defective. Additionally, the first plaintiff failed to establish hereditary succession to the post, as did the second and third plaintiffs. Furthermore, the Muchilika relied upon by the second plaintiff was found to be fabricated. Given these findings, the appellate court dismissed the appeal, confirming the trial court's decision.

15. The learned counsel for the appellants challenged the findings of the Courts below and raised following grounds:

i) The Courts below have failed to appreciate that the customary rights prevailing in the village are recognizable in a Court of law and Section 9 of the Code of Civil Procedure is not a bar to adjudicates such issues.

ii) The Courts below ought to have appreciated that Oor Gounder and Manthiri Gounder are offices hereditarily held by the families of the plaintiffs and the Civil Courts are competent to declare such rights enjoyed



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by them. The Courts below have failed to appreciate that the electricity charges of the Mariamman temple, its maintenance including renovation is being done by the plaintiffs and prior to them their predecessors. Any right enjoyed by virtue of office is bound to be declared as such by the Civil right enjoyed by virtue of office is bound to be declared as such by the Civil Court, unless specifically barred by some statute.

iii) That the Courts below have failed to note that the rights asserted by the appellants are peculiar to their families and calling upon the appellants to file the suit in a representative capacity is totally erroneous.

iv) That the Courts below have failed to note that the Hindu Religious Charitable Endowments department is not a necessary party to the proceeding as the temple does not fall within its control.

v) That the Court below have not discussed properly on any of the documents produced by the appellants and it had resulted in an improper and unsatisfactory finding.



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vi) When the court below is dismissing the suit on a technical ground of the suit not having being filed in a representative capacity, it ought not to have dealt with the merits of the case.

16. The Second Appeal was admitted on 06.09.2005, with the following substantial questions of law:

"a. Whether the Courts below are right in dismissing the suit on the ground that it should be filed in a representative capacity, when the relief sought for by the plaintiffs are personal to themselves?

b. Are the courts below right in deciding the case on merits after having concluded that the suit is not maintainable for want of representative character in its institution?

c. Whether the Courts below are right in holding that the suit is not maintainable, when perquisites attached to hereditary office can be ascertained only by Civil Courts?"



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17. Brief Facts of the Case: The first plaintiff claimed himself to be an Oor Gounder, the second plaintiff claimed to be a Manthiri Gounder, and the third plaintiff claimed to be an Ori Gounder. They asserted that they represented approximately 100 villages in and around Jagathabi village and that they had occupied these positions hereditarily. They used to preside over temple festivals, and the first plaintiff acted as the Dharmakartha for the temple.

18. When they attempted to celebrate the Karthigai festival in 1996, the defendants, who are also their close relatives, interfered and did not allow them to proceed with the festival, disputing their hereditary claim. Consequently, the plaintiffs approached the court, seeking a declaration that they were hereditary holders of these positions and requesting a permanent injunction to prevent the defendants from interfering in the conduct of the Karthigai festival in 1996.

19. The defendants objected, stating that the plaintiffs had not

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approached the court with correct facts and had falsely claimed that they occupied the positions hereditarily. They further argued that the plaintiffs had not submitted any application before the Commissioner of HRNC to conduct the temple festival.

20. The defendants contended that one Periyanna Gounder had occupied the position of Oor Gounder until his death in 1999. Following his demise, a dispute arose regarding the selection of the next Oor Gounder. The first plaintiff, who was Periyanna Gounder's son, did not allow the villagers to select an Oor Gounder through a democratic process. Subsequently, on 21-08-1996, the village elders conducted a panchayat, in which the plaintiffs also participated. During this meeting, the villagers selected Kannappa Gounder, Ramasamy Gounder, Chinna Vedi, and Appadurai for the respective positions, including the post of Dharmakartha for conducting the temple festival. However, the plaintiffs did not accept this decision. Nonetheless, the Karthigai festival was conducted successfully.



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21. Furthermore, the defendants stated that approximately 11 villages had submitted a representation requesting the selection of an Oor Gounder through a democratic process, as no hereditary right existed for these posts, as claimed by the plaintiffs. The plaintiffs, therefore, had the burden of proving their hereditary claim, about which the learned first appellate judge rightly pointed out.

22. The evidence of PW1 revealed that his grandfather had never occupied the post and that his father was selected by all the villagers as the Oor Gounder. Additionally, the plaintiffs' father had four brothers, and their grandfather, Masa Gounder, had two brothers. However, the plaintiffs' grandfather, Masa Gounder, never held the position of Oor Gounder, his younger brother, Pattappan, was the Oor Gounder. This fact itself demonstrates that the plaintiffs' family did not occupy the position hereditarily. The learned first appellate judge thoroughly analyzed this aspect in Paragraphs 13 and 14 of his findings needs no interference.



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23. Further evidence on the defendants' side indicated that the plaintiffs' father, while holding the position of Oor Gounder, also served as the Dharmakarthha of the temples in the village. During his tenure, he converted 20 acres of temple land into his personal property and transferred a portion of it to the Milk Society through a settlement deed. However, approximately 13.5 acres of land belonging to the Perumal Kovil while the Mariamman temple was remained under the possession of Periyanna Gounder, the plaintiffs' father. DW3 and DW4 testified to this effect and took steps to obtain information through an RTI request. In response, the Collector issued the Enam Register Extract, marked as Ex.B10, which confirmed that those lands belonged to the temple. As Dharmakarthha, the plaintiffs' father had illegally enjoyed the temple lands. After his demise, the first plaintiff attempted to seize control of the entire temple land and, conspiring with the second and third plaintiffs, filed the suit. The plaintiffs failed to provide any contrary evidence to disprove the defendants' claims, further proving that the lands under the first plaintiff's occupation belonged to the temple maaniam.

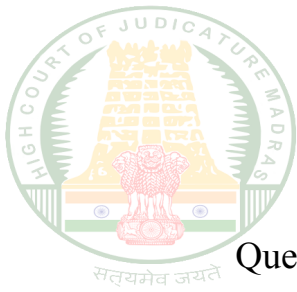


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24. At the time of filing the suit, the plaintiffs claimed to represent only the Vanniar community, yet they asserted that they represented all the people in and around the villages. The courts below rightly held that under such circumstances, they should have filed the suit in a representative capacity on behalf of the entire village. However, the plaint averments revealed that the plaintiffs approached the court in their individual capacities, claiming hereditary rights over the posts. Therefore, the courts below correctly concluded that the suit was not maintainable for lack of representative capacity.

25. The counsel for the appellants argued that if the suit was not filed in a representative capacity, the courts below ought not to have discussed the merits of the case. However, while considering the entire facts and circumstance, the Courts below rightly observed that the plaintiffs had not filed the suit in a representative capacity. This observation was made while deciding the main relief of declaration sought by the plaintiffs. Therefore, the findings rendered by the Courts below are sustainable. Accordingly,



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Questions of Law A and B are answered.

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26. The second plaintiff relied on Muchilika, Ex.A7, claiming that his father occupied the post of Manthiri Gounder and had executed a Muchilika in his favour to succeed him. However, Ex.A7 was an unregistered document, with the stamp paper dated 10-04-1989, whereas the document itself was executed on 10-03-1989 one month prior. This discrepancy indicated that the document was fabricated to falsely claim relief. Consequently, the second plaintiff was not entitled to claim that he was the Manthiri Gounder based on this document.

27. Similarly, the third plaintiff, examined as PW5, stated that his father, Appadurai, occupied the post of Ori Gounder. However, no proof was provided to substantiate this claim, nor was there any evidence showing that his grandfather, Kaveri Gounder's family, had occupied the post hereditarily.

28. Thus, all three plaintiffs failed to establish their hereditary claim



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over the posts. Their own evidence revealed that their ancestors had not occupied these positions hereditarily. While they initially claimed to represent only the Vanniar community, their statements later indicated that they represented the entire community across multiple villages, contradicting their own assertions. Therefore, the plaintiffs were not entitled to any relief, and the suit, as filed, was not maintainable under the law. Accordingly, Question of Law C is answered.

29. The findings of the courts below were well reasoned and required no interference. Accordingly, the second appeal is dismissed. There shall be no order as to costs.

25.02.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The Principal District Judge, Dharmapuri, Krishnagiri.
2. The District Munsif, Krishnagiri.
3. The Section Officer, VR Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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