

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2003

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Second Appeal No.152 of 1993

1.Union of India
rep. by Secretary
Ministry of
Communications
New Delhi

2.The Postmaster-General
Madurai division RMSMA Division

3.Senior Superintenant of
RMSMA Dn., Madurai ... Appellants

-Vs-

R. Gopalakrishnan
Accounts Clerk
HRO RMS MA Division
Madurai ... Respondent

Appeal against the judgment and decree dated 20.11.1992, made in A.
S.No.79 of 1991 on the file of the II Additional Sub Judge, Madurai,
confirming the Judgment and Decree dated 14.12.1990, made in O.S.No.11 7 of
1984 on the file of the District Munsif, Madurai Town.

!For appellants : Mr.K. Kannan

^For Respondent : Mr.V.Radhakrishnan

:ORDER

The suit was filed for declaration that the plaintiff belong to
Kattunaicken community. The trial Court decreed the suit and the appellate
Court has also confirmed it. Against that, the present second appeal has been
filed.

2. The substantial questions of law that are framed in this appeal
are as follows:

"1. Whether the Courts below are right in holding that the respondent too belongs to the Scheduled Tribe community when he originally belonged to the "Vaduga" Community?

2. Whether the respondent can convert his community from backward community to Scheduled Tribe when his kith and kin and other relatives belong to 'Vaduga' community?

3. Heard the learned counsel appearing for the appellants as well as the respondent.

4. Mr.K. Kannan, learned counsel appearing for the appellants submitted that admittedly the plaintiff when he entered the service was a Member of Vaduga Community which is a backward class community. Because of his marriage with a woman of Kattu Naicken community, he claims that his community also become changed and he also become a Kattunaicken and hence the suit has been filed.

5. As per the judgment of the Division Bench of this Court in Union of India Vs. The Registrar, Central Administrative Tribunal, Chennai (2002(3)CTC 411), this Court has held:

"Suit for declaration that person belong to Scheduled Castes and Scheduled Tribes barred by Article 341 and 342 of Constitution of India and Civil Court cannot entertain and try such suit for declaration."

Therefore, the learned counsel submitted that the suit filed is not maintainable and it has to be dismissed.

6. In the Judgment referred to by the learned counsel for the appellant it is held as follows:

"There can, therefore, be no doubt that the law laid down by the Supreme Court is that a suit for declaration that person belongs to the Scheduled Caste or Scheduled Tribe is impliedly barred by Articles 341 and 342 of the Constitution. The learned counsel for the respondent, however, submitted that decision of the Supreme Court has been considered by two learned single Judges of this Court, who have taken the view that even after that judgment of the apex Court, there is no bar to a suit for declaration that a person belongs to the Scheduled Caste or Scheduled Tribe, being entertained by the Civil Court.

Our attention was invited to the case of State of Tamil Nadu Vs. Durairaj, 2000(2)CTC 425. The learned single Judge therein appears to have taken the view that the jurisdiction of the civil Court must be expressly barred and that in the absence of the express bar, the suit for declaration would lie. We cannot approve of that view at all. The jurisdiction of the civil Court may be barred either expressly or impliedly. Such bar, by implication, has been held to be the consequence of Articles 341 and 342 of the Constitution by the Judgment of the Supreme Court in the case of State of Tamil Nadu Vs. Gurusamy. Moreover, when a judgment of the Supreme Court deals with the very question, which the High Court is required to consider, the High Court is bound to follow the law laid down by the Supreme Court and it is not open to the High Court to depart therefrom. The other decision relied upon by the counsel is the case of State of Tamil Nadu Vs. Navamani,

2000(3)CTC 273. A learned single Judge of this Court in that case held that the suit for declaration that a person belongs to Kattunaicken community is maintainable. That decision has been rendered without referring to the case of Gurusamy. That decision being clearly inconsistent with the law laid down by the Supreme Court, that decision must be regarded as per incuriam."

7. As per the above judgment, a suit to declare the person belong to Scheduled Caste is not maintainable. It has to be decided by an authority constituted under the rules. Therefore, the judgment and decree of the trial Court as well as the appellate Court is not legally valid and hence it is set aside.

8. In the result, the second appeal is allowed. The substantial questions of law are answered in favour of the appellant. No costs. Consequently, CMP.No.1577 of 1993 is closed.

Index:yes

Internet:yes

ksr

To

1. The II Additional Sub Judge,
Madurai.

2. The District Munsif
Madurai.

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