

Selvaraj and Others Vs. Uthirapathy and Others

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Court : Chennai

Decided On : Jan-20-2017

Judge : The Honourable Dr. Justice G. Jayachandran

Appeal No. : Second Appeal No. 206 of 1999

Appellant : Selvaraj and Others

Respondent : Uthirapathy and Others

Judgement :

(Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and judgment of the Additional Subordinate Judge, Nagapattinam passed in A.S.No.65 of 1997 dated 12.11.1997 reversing the decree and judgment of the District Munsif, Mannargudi passed in O.S.No.178 of 1996, dated 30.12.1996.)

1. The plaintiffs are the appellants herein. The suit is for declaration of right in respect of management and worship of Mariamman Temple situated at Periya Kuruvadi Village, Mannargudi Taluk.

2. The brief facts leading to the second appeal are as under:-

In Periya Kuruvadi Village, there is an ancient Mariamman Temple worshiped by the villagers and administered by caste Hindus. The plaintiffs five in number belonged to Harijans community of that village. When they demanded to

participate in the administration of the temple, it was denied by the defendants. Therefore, the suit was filed seeking declaration in respect of the right of the plaintiffs to participate in the temple festivals and be part of the administrative committee.

3. The defendants while admitting that the temple is open to all for worship irrespective of caste, they deny the allegation of the plaintiffs that Harijans are prevented from worshipping the deity. However, they ascertain their right to administer through body 14 members committee. Further, the defendants contended that in the said village, there is an another Mariamman Temple at Thoppu Street, which is exclusively administered by the Harijans community. The plaintiffs never in administration of the suit temple. The suit is filed with an ulterior motive at the instance of two disgruntled members of the administrative committee. The suit as framed is not maintainable, since no leave of the Court was obtained to file the suit in the representative capacity.

4. The Trial Court, after considering the rival pleadings, framed the following issues:

(1) Whether the plaintiffs are entitled for the declaratory relief?

(2) Whether the plaintiffs are entitled for permanent injunction as prayed for?

(3) What other relief the plaintiffs are entitled to?

5. The plaintiffs in support of their case, examined five witnesses as P.W.1 to P.W.5. On the side of the defendants, examined D.W.1 and 10 documents marked as Exs.B1 to B10. After considering the oral and documentary evidence, the trial Court held in favour of the plaintiffs holding that the plaintiffs are entitled for the relief sought for.

6. Aggrieved by that, the defendants preferred the first appeal and the first appellate Court, after re-appreciation of the evidence, found that though the suit is filed to declare the rights of the Harijans community of the suit village, necessary leave under Order 1 Rule 8 of C.P.C., has not been obtained by the plaintiffs and the documents relied by the parties does not indicate that the plaintiffs as

individuals are in the administration of the temple. Therefore, reversed the finding of the trial Court and allowed the appeal.

7. Aggrieved by the reversal judgment of the first appellate Court, the plaintiffs have preferred the second appeal. This Court, at the time of admission, has formulated the following Substantial Questions of Law for consideration:-

(1) Whether the suit as framed by the plaintiffs is unsustainable for want of permission as per Order 1 Rule 8 C.P.C., and as it has not been filed in a representative capacity?

(2) Whether the lower appellate Court having held that the suit filed by the appellants was not maintainable could consider the rights of parties on merits.

8. The specific allegation of the plaintiffs is that the Harijans of the village are not allowed to worship or participate in the management of the temple festivals. It is not the suit for personal grievance and it is also not the case of the plaintiffs that they were members of the administrative committee at some point of time and they are now prevented from exercising such right. While so, the trial Court has passed the decree on the following lines:

Declare that the plaintiffs, who are members of the harijans community, are entitled to participate in the management and festival committee of Mariamman temple.

The defendants are restrained from preventing the plaintiffs and the Harijans from worshipping the Mariamman Temple.

Thus, it is patent that when the suit is filed by in the individual capacity, the trial Court has granted the relief for the entire community.

9. No doubt, the Constitution provides equality and any discrimination based on caste is prohibited. In this case, the defendants have categorically conceded that the members of the Harijans community were never prevented from worshipping the deity. Their only claim over the property is in respect of its administration. The specific plea of the plaintiffs is that the temple is not a private temple, but it is a

public temple, which is denied by the defendants. There is no evidence let in by the plaintiffs to show that the suit temple is a public temple. Even if it is so, the Hindu Religious and Charitable Endowment Department is the competent Authority and necessary party to declare that a temple is a public temple and to appoint fit person for the temple. In this case, the plaintiffs are miserably failed to implead the Hindu Religious and Charitable Endowments Department. On the face of the pleadings, even without iota of evidence, the plaintiffs under the garb of class representation has filed the suit.

10. The first appellate Court pointing out the error of the judgment of the trial Court has held that commentary on the Civil Procedure Code cited by the trial Court in respect of the application under Order 1 Rule 8 is irrelevant to the facts of the present case and by referring the judgment of this Court reported in Assistant Commissioner, HR and CE Department, Salem v. M.K.S.E. Mudaliar [AIR 1987 Mad. Page 187], has held that the plaintiffs have filed the suit in their individual capacity seeking declaration in respect of their right to participate in the management of the temple, but have failed to substantiate their claim.

11. This Court finds no merit in the appeal since as individual, the plaintiffs have no evidence to prove their right of management of the temple and as a class, they have not sought permission of the Court under Order 1 Rule 8 of the Civil Procedure Code to sustain a representative suit. Therefore, there is no error in the judgment of the first appellate Court. Hence, the second appeal is liable to be dismissed.

12. In the result, the Second Appeal is dismissed. No order as to costs.

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