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In Re: R.V. Gopalan

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Court : Chennai

Decided On : Apr-25-1969

Reported in : AIR1970Mad503

Judge : M. Anantanarayanan, C.J.

Acts : Code of Civil Procedure (CPC) , 1908 - Sections 2(2) and 115

Appeal No. : Civil Revn. Petn. No. 497 of 1967

Appellant : In Re: R.V. Gopalan

Advocate for Pet/Ap. : O.V. Baluswami, Adv.;Govt. Pleader

Disposition : Petition allowed

Judgement :
ORDER

M. Anantanarayanan, C.J.

1. This revision proceeding arises under very singular circumstances, perhaps without any parallel in the cases that have come up in revisional jurisdiction before this court. O. S. No. 400 of 1966 on the file of the learned District Munsif, Tiruchirapalli, was instituted by a plaintiff, on whose behalf Sri Baluswami has here submitted arguments before me, for a declaration that he (the plaintiff) belonged to the Tuluva Vellala community. In the affidavit, the plaintiff statesthat the said

declaration was needed to be produced before the Public Service Commission with regard to the consideration of his claim for appointment. There was no defendant shown upon the record, and what the learned District Munsif did, after having taken up the suit for trial, was to call for objections by a kind of proclamation viz. beat of tom-tom, in the town. No one appeared in response to this proclamation, and the suit was decreed, after examining the plaintiff, on 13th April 1966. The declaration granted in the suit is a bare one to the effect that the plaintiff belonged to and was a member of a backward community, viz. Tuluva Vellala community, entitled to the rights and privileges recognised in favour of that community, as a backward class.

2. It appears from the record that this matter has been taken up suo motu bv this court, after receiving a report from the learned District Judge, under Section 115. Civil P. C.

3. Sri Baluswami raised an interesting argument, at the threshold; that such a revision proceeding may be without jurisdiction. He fully conceded the power of this Court to act suo motu in revisional jurisdiction. The reason alleged bv him was that Section 115. Civil P. C. itself makes the point explicit that the case should be one decided by some court subordinate to this court, 'and in which no appeal lies thereto'. It is alleged that this was an ordinary decree in a civil suit. A regular appeal is provided for by the processual law, which fact, would bar revisional jurisdiction.

4. I have carefully considered this preliminary objection and I find it to be unsubstantial. Certainly, the point would have force and weight, if there had been a decree in the suit based on a lis, viz, a controversy between two parties. When there is no lis and there is only one party (here the plaintiff) who succeeded in obtaining the decree that he prayed for, it is indisputable that there could be no appeal, since the successful party cannot appeal, and, there is no other party who has suffered a decree. Hence, I find that the exercise of revisional jurisdiction is justified and within the law, on the peculiar and exceptional facts of this case.

5. The next point is, how such an extraordinary procedure came to be followed and how such a decree was passed. It is seen from the report of the learned

District Judge, that some senior counsel did appear for the plaintiff, that the difficulty with regard to the absence of a defendant was felt, and that some authority was cited which persuaded the District Munsif to adopt this extraordinary course. As the learned Government Pleader has submitted, appearing as amicus curiae, there are no authorities upon a point of this kind. But there is indeed, a referencefn Halsbury's Laws of England, 3rd Edn. Section 1610, page 747, with regard to merely declaratory judgments, which can be given 'whether there be a cause of action or not' and though there is no consequential relief. But this passage has no application to the present situation. The real point here is not that the decree is only for a bare declaration without a consequential relief; such a decree would be perfectly valid, if no ancillary relief was needed for the adjudication of the claim.

But every decree presupposes a lis, or a matter in controversy between two parties. There can be no lis when there is only a plaintiff without a defendant. Further, in the present case, it is perfectly obvious that there could have been a defendant, viz., the Director of Public Instruction, who according to the plaintiff, was responsible for a wrong entry or erroneous omission, which deprived the plaintiff of the protection afforded by his membership of a backward community. Since the plaintiff did not institute a lis, in the proper sense and there was no defendant on record, the decree is a nullity. It has accordingly to be set aside as such.

6. But, in the interest of justice. Iequally direct that the plaint itself beremitted back to the trial court, and thatthe plaintiff be now called upon to amendthe plaint, by impleading a defendant ordefendants, whether the Director of Public Instruction or some other authorityof the State. If, after the opportunity isgiven, for this purpose, the plaintiff doesnot choose to do so, the suit has to bedismissed or struck off as not maintainable in law. I must here make it clearthat I am carefully refraining from anyobservation whatever, about the presentstatus of the plaintiff as an Officer of theState service, since Sri Baluswami represents that the plaintiff was ultimately appointed by the Madras Public ServiceCommission. Also, I have no reason tothink that there was any lack of bonafides on the part of any one concerned inthis suit and the consequential decree;the error seems to be purely due to

afailure to grasp the fundamental postulates of the situation. The revision isallowed accordingly. No order as tocosts.

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