

Harikrishnan Vs. James Trinite and ors.

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Court : Chennai

Decided On : Jun-12-2001

Reported in : (2001)3MLJ291

Appellant : Harikrishnan

Respondent : James Trinite and ors.

Advocate for Pet/Ap. : Mr. Sivashanmugam

Judgement :

Prabha Sridevan, J.

1. The 4th defendant is the appellant.

2. The 1st respondent herein filed O.S.No. 114 of 1999 for a declaration that the order passed in Crl.M.P.No. 234 of 1997, dated 17.11.1998 by the 2nd respondent herein is null and void and directing the 3rd respondent to cancel the birth certificate issued by him. The reason for the suit seems to be the apprehension of the 1st respondent that the appellant herein may defeat his promotional chances. It appears that the 1st respondent is in the Fire Service Department of the Government of Pondicherry and the Assistant Divisional Fire Officer is the next avenue of promotion for him. This is a single isolated post. The 1st respondent appears to have been promoted to the post of Assistant Divisional Fire Officer with effect from 28.4.1993. The appellant herein is a Station Officer in the Fire Service

Department. Persons who belong to the Scheduled Caste and of Pondicherry origin are preferred in appointment and promotion to Scheduled Castes who are migrants. The appellant had applied for registration of his birth and a certificate was issued on 5.12.1998, registering the birth of the appellant in Villanur Commune, Pondicherry. The suit has been filed to declare this order as void.

3. The respondents 2 and 3 filed a written statement stating that they have the power to perform certain acts with regard to registration of births and deaths and accordingly, an order was passed in Crl.M.P.No. 234 of 1997 on an application made by the appellant under Section 13(3) of the Registration of Births and Deaths Act 1969. It was also stated that this is a judicial order and cannot be declared as null and void in a Civil Court. The 4th respondent herein filed the written statement, stating the above facts and also that the suit was barred by virtue of Section 28(1)(2) of Registration of Births and Deaths Act 1969.

4. The appellant herein filed his written statement denying that he was a native of Tamilnadu. The written statement also referred to an interim injunction issued by this Court, restraining the 2nd respondent herein from reverting the 1st respondent from the post of Assistant Divisional Fire Officer. In these circumstances, this suit as well as the petition for interim injunction was not maintainable. The appellant denied that he was a native of Tamil Nadu and that he was a migrant of Pondicherry. According to him, he was a native of Pondicherry.

5. The trial Court dismissed the suit on the preliminary issue of jurisdiction. Against that, an appeal was filed. The learned Additional District Judge allowed the appeal on the ground that inspite of the bar placed on the power of Court, the orders passed under the Act can be challenged. He also directed that the issues already cast by the trial Court should be rearranged and remanded the matter. Aggrieved by this, the present C.M.A., has been filed.

6. Mr. Sivashanmugam, learned Counsel for the appellant submitted that the suit was clearly not maintainable and the order of the trial Court should be confirmed by setting aside the order of the appellate Court. The learned Counsel referred to the various provisions of the Registration of Births and Deaths Act 1969 (hereinafter called 'the Act'). It is seen from G.O.Ms.No. 191/LAD Pondicherry,

dated 29.8.1983 that the 3rd respondent has been empowered to perform the functions stipulated in the said G.O. The order states that any birth or death which has not been registered within one year of the occurrence shall be registered on an order made by a Magistrate of the 1st class after verifying occurrence of the birth or death and on payment of the prescribed fee. The question of entrusting the functions under Sub-section (3) of Section 13 of the Act to the Executive Magistrate was considered by the Lieutenant Governor of Pondicherry and the Sub-Divisional Magistrate-cum- Sub-Deputy Collector, (Revenue), Pondicherry was conferred the powers to perform the aforesaid function in respect of the whole of Pondicherry region. Therefore, there is no doubt that the 3rd respondent had the power to discharge the functions under Section 13(3) of the Act.

7. Section 13 deals with delayed registration of births and deaths. Section 13(1) deals with the registration of birth or death after the expiry of the period stipulated therefore, but, within 30 days of its occurrence. Section 13(2) deals with the registration of birth or death of which delayed information is given after 30 days, but, within one year. Section 13(3) deals with registration of birth which shall be made only on an order made by a Magistrate of the 1st class or a Presidency Magistrate, after verifying the correctness of the birth or death and on payment of the prescribed fee. Therefore, when registration of birth or death is sought to be made one year after its occurrence, the Magistrates empowered in this regard shall pass an order directing registration of the birth or death as the case may be. To prove the date of birth, the petitioner may produce supporting documents like affidavit by third party who knows the date of birth, horoscopes, school records, certificates from hospital authorities, etc. In appropriate cases, the Court may, after receipt of the petition, direct a general notice to be issued to call for any objection. In fact, in the decision reported in *Pavathal v. Periasamy Gounder* 1992 L.W. (CrI.) 469, the Madras High Court refused to quash the order passed by the Magistrate under Section 13(3) of the Act and it was held that the manner by which the Magistrate has to verify the correctness of the birth or death is left to his absolute discretion. The Act also provides for correction or cancellation of entry in the register of births and deaths. Section 15 provides for this. It is stated therein that if it is prayed to the satisfaction of the Registrar that any entry of a birth or death in any register kept by him under this Act is erroneous in form or substance or has

been fraudulently or improperly made, he may correct or cancel the entry.

8. In *Velu v. Malathi* it was held that since the procedure is prescribed under the Act for verification under Section 13(3) of the Act, it follows that the Magistrate is not expected to verify the correctness of date of birth or death or to hold an enquiry in the event of a dispute over the exact date. It was held that deciding the exact date of death or birth in the case of a dispute regarding the date, is beyond the scope of Section 13(3) of the Act. It was held thus:

He is not concerned with the exact date of birth or death. He has to register as required by the applicant and leave the aggrieved parties, if any, to seek remedy in the civil forum or any other appropriate forum.

9. The decision reported in *Velu v. Malathi* and *Pavathal v. Periasamy Gounder* 1992 L.W. (Crl.) 469, deal with orders passed by the Magistrate under Section 13(3) of the Act. In both the cases, this Court refused to quash the order of the Magistrate on the ground that the Judicial Magistrate is only required to verify whether the birth or death had in fact taken place. It was held that even deciding the exact date of death or birth in the case of a dispute regarding the date is beyond the scope of Section 13(3).

10. In the decision reported in the aforesaid volume at page 469, the learned Judge has held that under Section 13(3), all that the learned Magistrate was required to do was to verify the correctness of the birth or death and order registration. It was held thus:

The applicant who seeks registration, is not required to prove the fact of the birth or death, as a fact is required to be proved either in a Civil Court or in a Criminal Court. The manner by which the learned Magistrate has to verify the correctness of the birth or death is left to his absolute discretion. The Evidence Act would not apply to the proceedings.

11. Therefore, we see that the order of the Magistrate pursuant to which registration is done does not even establish the correctness of the date of birth or death. If the registration or any entry is erroneous in form or substance, the Act

provides for correction of the same upon satisfying the Registrar in this regard. In this case, the 1st respondent has not even made it clear how his suit is one of a civil nature that is governed by the provisions of C.P.C. The trial Court held that the suit is barred by Section 28(1) of the Act, which reads thus:

No suit, prosecution or other legal proceedings shall lie against the Government, the Registrar-General, any Registrar, or any person exercising any power or performing any duty under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

12. Both the 3rd and 4th respondents have exercised their power and performed their duty under this Act. Therefore, no suit can lie against them. The appellate Judge has relied on a decision reported in *Shiv Kumar Chadha v. Municipal Corporation of Delhi* to arrive at the conclusion that even if there is a bar under the Act, the orders passed under the Special Statutes can be questioned on the jurisdictional issue. The appellate Judge while dealing with the objection of the 1st respondent that the authority which passed the order under Section 13(3) of the Act had no power to do so, brushes aside the G.O. mentioned above holding that at this stage, that need not be determined. The G.O. clearly shows that the Sub-Divisional Magistrate has been empowered to pass orders under Section 13(3) of the Act. In fact, in the decision relied on by the appellate Judge, the Supreme Court held that in spite of the bar imposed under the *Delhi Municipal Corporation Act* over the power of Courts', the Court may examine the issue under certain circumstances. The Supreme Court held thus:

The Court should entertain a suit questioning the validity of an order passed under Section 343 of the Act, only if the Court is of prima facie opinion that the order is nullity in the eyes of law because of any 'jurisdictional error' in exercise of the power by the Commissioner or that the order is outside the Act.

13. In this regard, it is also useful to refer to the judgment reported in *C.V. Vijayarangam v. The State Bank of India* 99 L.W. 738. In that case, the petitioner prayed for continuance of service on the ground that the date of birth registered in the service records was wrong on the basis of the order obtained under Section 13(3) of the Act. The petitioner's employers declined to accept the order obtained

under the Act. It was held thus: learned Counsel appearing for the petitioner, would submit that sanctity and conclusiveness have got to be attached to the order passed under the Act. I do not think that this contention could be accepted because it is a well settled proposition that an entry in any public record or official register of record, though a relevant fact under Section 35 of the Indian Evidence Act, is not conclusive presumptive proof of what is entered there. If a dispute arises over such entry, it has got to be resolved in an ordinary Civil Court and no one can insist that the entry must be acted upon as conclusive proof of what is stated therein by any authority especially when a dispute exists over the same.

While repealing the contention that the entry made under the Act is conclusive, K. Jagannatha Shetty, J. of the High Court of Karnataka in H. Subbarao v. L.I.C. of India A.I.R. 1976 Karn. 231 observed as follows:

It is an accepted principle that an entry in the Register of Births is not conclusive evidence of the disputed date of birth. So also, an entry made pursuant to the direction of the Magistrate under Section 13(3) of the Act....The policy of the law embodied in the Section, as it appears to me, is to avoid manipulation in the entries relating to the date of births and deaths. Such entry shall be made immediately after the occurrence. Precaution should be taken while making delayed entries. The law says that an entry which has not been made within one year of its occurrence cannot be made without an order of the Magistrate. Section 13(3) of the Act is just a constraint on the Registrar. It is not a provision whereby an aggrieved party could get an adjudication on his disputed date of birth. The order of the Magistrate binds only the Registrar and not others. The entry made by the Registrar, pursuant to an order of the Magistrate, cannot carry higher probative value and its proof must accessorially depend upon the facts and circumstances of each case.

I fully endorse the view of the learned Judge.'

14. Therefore, when the entry does not even amount to adjudication of date of birth and the order of the Magistrate binds only the Registrar and not others, here is no cause of action to try a suit of civil nature as per Section 9, C.P.C. In this case especially, from the plaint averments, it is seen that the respondent is not

even disputing the date of birth. What he is aggrieved by is the record of the place of birth in the register. If he wants to have an adjudication regarding the place of birth of the appellant herein, his remedy is not to attack the order of the Magistrate under Section 13(3) of the Act or the entry made by the Registrar pursuant thereto. The scope and ambit of the Act itself is very limited and the actions done by the persons empowered under the Act is limited only to the recording of the entry. Any dispute regarding the same cannot be questioned in the suit of this nature. The order of the appellate Judge is therefore set aside. The dismissal of the suit by the trial Court is confirmed and the C.M.A. is allowed. No costs. C.M.P. No. 4144 of 2001 is closed.

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