

IN THE COURT OF THE CIVIL JUDGE & JMFC., KOPPA

Present : Sri. Kanchi Mayanna Goutam, B.A.L.,LL.M.,
Civil Judge & JMFC., Koppa.

Dated : This the 7th day of March 2020.

O.S. No. 50/2019

Plaintiff/s : M/s. The Anaparai Estates Limited,
Murgadi Estate, Durgadabetta Post,
Koppa Taluk, Chikmagalur District,
Being a registered company represented
by its Authorized person M.C. Cherian,
S/o M.C. Chandy, Aged about 41 years,
Manager, Yelliemadaloo Estate,
R/O 55, Lavelle Road, Bangalore-01.
(Represented by Sri., Hareesh Singatagere/B.K.
Venkatesh, Adv.,)

V/S

Defendant/s : R.Janav, S/o Late Rathnappa,
Aged about 43 years, Photographer,
Behind Syndicate Bank,
Shanthipura, Durgadabetta Post,
Koppa Taluk.
(Represented by Sri. Muralidhar H.
Nayak/B.S. Kalavarkar , Adv.,)

ORDER ON I.A. NO. V FILED BY THE DEFENDANT
UNDER ORDER VII RULE 11(d) OF C.P.C. R/W SECTION
20 OF THE SCHEDULE CASTE AND SCHEDULE TRIBES
(PREVENTION OF ATROCITIES) ACT 1989

The present application is filed by the defendant under Order VII Rule 11(d) of C.P.C. R/W Section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 seeking rejection of plaint on the ground that the suit is barred by the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

2. The brief facts of the case necessary for the purpose of disposing the application are as under:

The plaintiff company is a registered company, purchased the plaint 'A' schedule property under registered sale deed, dated 15.7.1943 from one Manamel Cherian along with other

properties. The plaintiff company is in possession and enjoyment of the said property ever since from its purchase and presently the plaintiff company cultivated with coffee, silver oak tree, pepper etc.

It is further stated that the labourers and the staff of the plaintiff company who were devotees of God Babbu Swamy and Chamundeshwari, constructed a temple for their God Babbu Swamy and Chamundeshwari in the plaint 'A' schedule property. The said Gods were/are being worshiped by the labourers of the plaintiff company and it is exclusively meant for the worship of its labourers and staff and the general public have got no right whatsoever over the said temple.

It is further stated that the defendant is the resident of Shanthipura and with the permission of the plaintiff company, got appointed as Archak of the said temple in the year 2009. It is

alleged that the defendant with an intention to make money started to woo the devotees to the said temple by attributing exaggerated magical powers to the said Gods and started to solicit donations from devotees and other sources. The plaintiff company had warned the defendant to stop the same as it will harm the reputation of the plaintiff company. The defendant enraged by the same started to make claim over the management of the said temple and to expand the land around the said temple. The defendant leveled the ground around the said temple in order to make some construction. The plaintiff company also directed the defendant to not to do such illegal activities. Thereafter, the defendant became more aggressive in making claims over the management of the said temple and started to file false petitions against the plaintiff company. When the said illegal activities were opposed by the staff of the plaintiff company, the defendant abused and threatened the staff and labourers of the plaintiff

company. In this regard the complaint was lodged before the Jayapura Police who issued an endorsement. Thereafter the defendant started to lodge false petitions against the plaintiff company before revenue, forest and other authorities of the State by falsely alleging that the plaintiff company has encroached the forest land. There is no land adjoining the plaint 'B' schedule property which belongs to the Revenue or the forest department and the same is surrounded by plaint 'A' schedule property. It is a false complaint made by the defendant in order to harass the plaintiff company and thereby usurp the management of the said temple and to occupy the said plaint 'B' schedule property. The defendant is making hectic efforts to clear the adjoining area of the plaint 'B' schedule temple and make construction over the said area. The defendant in order to achieve his illegal goal, get certain documents created illegally.

It is further stated that the defendant, who has got no right, title whatsoever over the plaint schedule properties, is making illegal claims by forming a committee for the management of the said temple which is a private temple exclusively meant for the labourers and staff of the plaintiff company. The defendant in order to get the possession of the said temple is making such illegal efforts. The defendant was removed as Archaka of the said temple on 25.10.2019 and directed to not to officiate as priest of the said temple by the devotees of the said temple and by the plaintiff company. It is alleged that on 8.11.2019, the defendant along with supporters trespassed into the plaint schedule properties and the temple situated in the plaint 'A' schedule property and tried to open the door of the said temple and perform religious ceremonies as priest. The same was opposed by the labourers of the plaintiff company. The defendant is creating disharmony among the labourers of the plaintiff company and as

well as threatening to take possession of the above said temple situated over the plaint 'A' schedule property. Hence, the present suit.

3. The defendant placed appearance and filed the written statement and took up various contentions by denying the entire averments made by the plaintiff company. Further, the defendant has come up with this application under Order VII Rule 11(d) of CPC seeking rejection of plaint on the ground that the suit is barred by the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

4. In support of the application the defendant filed affidavit contending that for himself and his community there is protection under the special law by preventing whoever not being a member

of the Schedule Caste or Schedule Tribes, wrongfully dispossessing him from the Bhaghavan Sri. Babbu Swamy and Sri. Chamundeshwari temple premises. The defendant further stated that he is the Archaka of the said temple, which is came to him under succession as a custom and usage of Mundala Community of South Canara Region. The plaintiff instituted false, malicious or vexatious suit against the defendant with ulterior motive and the averments of para No. 5 clearly attracts the atrocity done by the plaintiff. The plaintiff committed the offences punishable under section 3(1)(g), 3(1)(p), 3(1)(za), 3(1)(zb) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Amended 2016), on which the complaint is registered on 30.12.2019 and numbered as crime No. 36/2019 on the file of Jayapura Police Station, which is pending for the enquiry by the Dy.S.P., Koppa Sub-Division.

Further, it is stated that the defendant has constitutional protection and also protection under section 3(1)(g), 3(1)(p), 3(1)(za), 3(1)(zb) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 (Amended 2016). Whatever claim made by the plaintiff will come under the general law. The defendant has protection under special law which is thereto protect the right and the temple managed by the Schedule Caste Community. It is further alleged that the special law prevail over the general law. Hence, the suit filed by the plaintiff is against to the constitution and also against to the special law. If the plaintiff continued to proceed with the false suit against the community of defendant, it will amount to the offence under section 3(1)(p) of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Amended 2016). Therefore, the defendant submitted that the suit is barred by special law.

It is further stated that as per section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 clearly bars the suit. Hence, prays for rejection of the plaint as this court has no jurisdiction under section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989.

5. Upon service of the application, the plaintiff who is the opponent filed his detailed objections to the application filed by the defendant and has contended that the application is neither maintainable under law or facts and there is no material before the court on the basis of which this court can conclude that the plaint should be rejected. The plaintiff submitted that they have never committed any offences under the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. Further it is submitted that, the defendant/applicant has never got the constitutional protection to grab the properties of

others. The defendant/applicant has no protection under special law and he is not a Pradhan Archak. Further it is submitted that, there is no bar to file the suit under section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act. The said provision does not create any bar to file the suit and to get the civil rights determined. It is further submitted that the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act is meant to punish the offenders committing the atrocities against the members of the Schedule Caste and Schedule Tribes, but the defendant/applicant cannot take the same into his advantage and curtail the civil rights of the plaintiff. The said Act does not create any bar from filing the civil suit either expressly or impliedly. The defendant/applicant is falsely relying on the provisions of the Act in order to grab the land of the plaintiff and to encroach the same. If the intention of the legislature was to prevent filing of any suit, there would have been specific

provision to that effect. In the absence of specific bar, the defendant/applicant cannot take the penal provisions to his aid and commit illegalities. The defendant/applicant by filing a false and frivolous complaint, is making attempts to grab the property of the plaintiff. The offences under the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act are triable by special court and this Hon'ble Court has got jurisdiction to determine the rights of the parties and there is no bar as contended by the defendant/applicant. Hence, prays for dismissal of the application with cost.

6. After careful perusal of the averments in affidavit accompanying the application and objections the following points arise for the consideration of this court are:

- 1) Whether the defendant has made out sufficient grounds to reject the plaint ?

2) What order?

7. Upon careful perusal of the documents available before this court and after giving its anxious consideration to the arguments canvassed and pleadings, this court answers the afore raised points for consideration as under :

Point No.1 : In the negative.

Point No.2 : As per final order
for the following reasons

REASONS

8. **Point No.1:** At the very outset it is incumbent on the part of this court to reassert that the defendant has filed the application under Order VII Rule 11(d) of Civil Procedure Code, which reads as under:

11) Rejection of plaint :

Plaint shall be rejected in the following cases.

(d) Where the suit appears from the statement of the plaint be barred by any law.

So, the endeavor of the defendant to demonstrate as to under which law the suit of the plaintiff is barred.

9. In this regard as already observed, the defendant has filed the application urging that the suit of the plaintiff is barred under the provisions of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, specially under section 20 of the said Act as the plaintiff herein has committed the offences under the said Act.

10. Firstly, as regards the contention of the defendant that the section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act bars the present suit against the defendant by the plaintiff. For the better appreciation of the case section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 is hereby quoted:

“Act to override other laws.— Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

11. No doubt that the provisions of Special Act prevails over the General Law. Section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 is overriding clause on the provisions of other law notwithstanding inconsistency therewith.

12. It is settled principle of law that the plaint has to be rejected or while dealing with the order VII rule 11(d) of C.P.C., the only contents of plaint averments shall be looked into. The contents of written statement or the evidence cannot be looked

into, in other words, the suit must be barred and such conclusion was drawn only on the averments made in the plaint. The learned counsel for the defendant and plaintiff relied on the following judgments which also supports this settled principle of law.

- 1) 2011 (2) KCCR SN 120
- 2) 2015 SAR (Civil) 1151
- 3) 2016 (2) KCCR 1500

13. By this both the plaintiff and defendant admitted that the contents of written statement or other documents cannot be looked into at the time of rejection of the plaint under order VII rule 11(d) of C.P.C. The contents of plaint is the only source to consider whether the plaint has to be rejected or not under order VII rule 11(d) of C.P.C.

14. By admitting the above said settled principle of law, the learned counsel for the defendant also relied on the contents of plaint to show that the said contents will attract the offences under the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 and thereby the present suit is barred by law and also against to the public policy. It is the contention of the defendant that the allegations made in the plaint by the plaintiff on the defendant about the showing of alleged exaggerated magical power to the Gods and to the devotees and thereby solicit donations, institution of false vexatious suit, wrongfully occupying the land owned or possessed by the member of the Schedule Caste and Schedule Tribes or interference with the enjoyment of the right of the members of the Schedule Caste and also causing physical and mental agony to a member of the Schedule Caste and Schedule Tribes is offence which are described under section 3(1)(g), 3(1)(p),

3(1)(za), 3(1)(zb) of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 (Amended 2016) and also punishable under the said Act. Hence, it is argued that in view of commission of the alleged offences, section 20 of the said Act is applicable, hence, the suit is not maintainable. The said argument is strongly opposed by the learned counsel for the plaintiff by contending that there is no specific bar in the said Act which bars the jurisdiction of the civil court and the suit is filed for the protection of the property of the plaintiff company, as such, the suit is purely civil in nature.

15. By considering the contentions urged by the both parties, the defendant is alleging about the commission of the offences under the provisions of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989, by the plaintiff company and its employees. Admittedly, still the said complaint is pending for

enquiry by the investigating agency. Whether the employees of the plaintiff company or the plaintiff company has committed the said offences or not, is a matter which is pending for enquiry by the Dy.S.P., Koppa and at this stage, this court cannot make any observation on that point. The civil court has inherent power to decide the case under section 9 of the C.P.C. and the court shall have the jurisdiction to try the suit of a civil nature except the suits which are expressly or impliedly barred. If any person pleads that this court has no jurisdiction to try the suit, he has to prove the same strictly. No doubt that the special enactment is enacted for the prevention and protection of the rights of the members of the Schedule Caste and Schedule Tribe. But, there is no specific provisions in the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Amended 2016), which bars the filing of suit for injunction on the immovable property against the members of the Schedule Caste and

Schedule Tribe. It is the case of the plaintiff company that the suit schedule properties are belongs to the company and the defendant has no right to interfere with the properties of the plaintiff company.

16. The learned counsel for the defendant relying on the following sections and citations in support of his argument.

- 1) 2015 (1) KCCR 394
- 2) 2012 (4) KCCR 3588
- 3) The SC/ST (Prevention of Atrocities) Act
- 4) The Protection of Civil Rights Act
- 5) Smt. Narasamma V/S Sri. K.V. Ramprasad (Hon'ble Karnataka High Court WP No. 12971/2012).
- 6) Bhargavi Constructions & Another V/S Kothakapu Muthyam Reddy and Others. (Hon'ble Supreme Court Civil Appeal No. 11345/2017)
- 7) Ashok Marketing Ltd., & Another V/S Punjab National Bank and Others. (1991 A.I.R. 855)

- 8) Gujarat Urja Vikas Nigam Ltd., V/S Essar Power Ltd.,
(Hon'ble Supreme Court Civil Appeal No.1940/2008)
- 9) ILR 2003 Kar. 3913.(Smt. Guduma V/S Shikandar &
Others)

The facts and circumstances of these quoted cases are totally different. Hence, the precedent laid down in these cases are not applicable to the present case in disposing the present application.

17. As submitted by the defendant the complaint given by him against the employees of the plaintiff company by alleging that they have committed the offences under the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Amended 2016). But, the said complaint still pending for enquiry. The offences under the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Amended 2016) are triable by the Hon'ble Special Court. The present suit is filed for

the relief of injunction by claiming the ownership and possession over the schedule properties. There is no provision in the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Amended 2016) or in the Protection of Civil Rights Act 1955 which bars the jurisdiction of the civil court on the suit filed for injunction on the basis of claiming the ownership and possession over the properties. No doubt that section 13 of the Protection of Civil Rights Act 1955 limits the jurisdiction of the civil court in entertaining any suit or proceedings which is contrary to the provisions of the Protection of the Civil Rights Act or which practices the untouchability. The entire pleadings are not against to any community nor against to any person by targeting his community. No such pleadings are available in the plaint, which contrary to the provisions of the Protection of the Civil Rights Act. The defendant is claiming that in lieu of the Special Enactment like Schedule Caste and Schedule Tribe Act

and the Protection of the Civil Rights Act, the present suit is not maintainable. But, merely a special enactment does not bars the suits under general law which do not fall within the scope of any of sections of the Act. The said principle is affirmed by the Hon'ble Supreme Court in its judgments reported in (1981) 4 SCC 431 (Allahabad District Co-operate Ltd., V/S Hanuman Dutt Tewari) and (1986) 4 SCC 319 (Smt. Parvati & Others V/S Smt. Fatehsinhrao Pratapsinhrao).

18. The present case is filed for the relief of permanent injunction alleging that the defendant having no right, title or interest over the suit schedule properties, trying to encroach and disturb the peaceful possession and enjoyment of the suit schedule properties by the plaintiff company. There is no express or implied bar in the special enactment relied by the defendant which false the present suit filed by the plaintiff

company for the relief of permanent injunction on the immovable property allegedly owned and possessed by it. Section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 is applicable to the penal provisions and not for the suit for injunction which is filed on immovable property. For all these reasons, the grounds are not made out to reject the plaint. As such, this court finds no hesitation in holding the point No.1 in the negative.

19. **Point No. 2:** With the observation and in view of the findings of this court on Point No. 1, this court answers the point No.2 as under, by passing the following:

ORDER

The I.A. No. V filed by the defendant under Order VII Rule 11(d) of C.P.C. R/W Section 20 of the Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 is hereby dismissed.

No order as to cost.

(Dictated to the Stenographer, typed by her directly through computer, corrected by me and then pronounced in the open court on this the 7th day of March, 2020)

Sd/-xxxx 7/3/2020
(Kanchi Mayanna Goutam)
Civil Judge & JMFC.,
Koppa.