Satrucharla Vijaya Rama Raju vs Nimmaka Jaya Raju & Ors on 27 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 543, 2005 AIR SCW 6197, 2006 (1) SCC 212, (2005) 8 SUPREME 433, (2005) 4 RECCIVR 674, (2006) 1 ICC 750, (2005) 8 SCALE 745, (2005) 4 JLJR 208, (2005) 8 SCJ 238, (2006) 1 ANDHLD 125, (2006) 1 ALL WC 321, (2006) 2 CIVLJ 874, (2005) 4 CURCC 277, (2005) 4 PAT LJR 309, (2005) 9 JT 545 (SC)

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Bench: R.C. Lahoti, C.K. Thakker, P.K. Balasubramanyan

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           CASE NO.:
Appeal (civil)  1102 of 2004

PETITIONER:
SATRUCHARLA VIJAYA RAMA RAJU

RESPONDENT:
NIMMAKA  JAYA  RAJU & ORS.

DATE OF JUDGMENT: 27/10/2005

BENCH:
CJI R.C. LAHOTI,C.K. THAKKER & P.K. BALASUBRAMANYAN

JUDGMENT:
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J U D G M E N T P.K. BALASUBRAMANYAN, J.

1. The appellant successfully contested the State Assembly Elections in 1999 from No.8 Naguru (ST) assembly constituency in the State of Andhra Pradesh. His election was challenged by respondent No.1 herein, in Election Petition No. 13 of 1999, under Section 80 of the Representation of the People Act, 1951 read with Sections 5 and 100 (1)

(d) (i) of the Act. The contention raised by the first respondent was that the appellant was not qualified to contest from a constituency reserved for the scheduled tribes. According to respondent No.1, the election petitioner, the appellant was a 'Kshatriya' and was not eligible to contest from a constituency reserved for the scheduled tribes. His claim that he belongs to the "Konda Dora" tribe, was not true. Since he was ineligible to contest from the constituency, his election was liable to be declared void and set aside. The first respondent also prayed that he may be declared elected instead.

2. The appellant resisted the election petition. He pleaded that he belongs to the "Konda Dora" tribe which was a notified Scheduled Tribe. He was neither a 'Kondaraju' nor a 'Kshatriya'. Even otherwise, 'Kondaraju' and "Konda Dora" were synonymous and the "Konda Dora" tribe was included in the list of Scheduled Tribes. He further pleaded that his earlier election from No.8 Naguru (ST) assembly constituency, the self-same constituency, was challenged by a voter in Election Petition No. 13 of 1983 on the very same ground that he did not belong to the "Konda Dora" tribe. That election petition, after contest, was dismissed by the learned Judge to whom it was assigned after a regular trial and the said decision barred a fresh enquiry into the same question in the present election petition and the decision therein was conclusive on his status. He also explained that his ancestors and himself described themselves as 'Kshatriyas' in view of the status enjoyed by them in their tribe and not because they belonged to the 'Kshatriya' community. An ancestor of his had been conferred the title "Satrucharla" and it was the surname of his family. His predecessors and his cousin had all contested in prior elections from reserved constituencies and no objection had ever been raised prior to 1983 regarding their status. In a similar case, where the members of the family of a candidate had described themselves as 'Kshatriya', the Supreme Court had held in an election petition that was filed challenging their status, that as a matter of fact that candidate belonged to a Scheduled Tribe and was not a 'Kshatriya'. He raised a further contention that the caste certificate issued by the competent authority under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 to the effect that he belongs to the "Konda Dora" tribe was final and binding on the court.

3. Issues were raised, inter alia, on pleas that the judgment in E.P. 13 of 1983 operated as res judicata with regard to the status of the appellant, that the judgment therein was a judgment in rem and consequently conclusive on the status of the appellant and that the present election petition was not maintainable, so long as the community certificate issued by the Collector remained in force. At the instance of the appellant, the above three issues were taken up for consideration as preliminary issues. By order dated 13.12.2002, the assigned Judge of the High Court held that the judgment in E.P. 13 of 1983 dated 16.1.1984 did not operate as res judicata on the status of the appellant as far as the present election petition is concerned; that the judgment in E.P. 13 of 1983 was not a judgment in rem and could not bind those who were not parties to it and that the said adjudication did not bar the trial of the present election petition. He held that the provisions of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 or the certificate issued thereunder did not have any impact on the trial of the election petition under the Representation of the People Act, 1951 and that the election petition had to be tried and decided on the basis of evidence that may be adduced in it. This order of the learned Judge was challenged before this Court in SLP (C) Nos. 1438-1439 of 2003. This Court, by order dated 7.2.2003, dismissed those petitions for special leave. Thereafter, evidence was taken in the election petition. Documents were marked on the side of the parties and oral evidence was led. The learned Judge, on an appreciation of the pleadings and the evidence in the case, came to the conclusion that the appellant did not belong to "Konda Dora" community, a Scheduled Tribe and was consequently ineligible to contest the election from a constituency reserved for the scheduled tribes. Thus, the learned Judge set aside the election of the appellant from No.8 Naguru (ST) assembly constituency in the general elections held on 11.9.1999. The prayer of the first respondent to declare him elected, was declined on the ground that such relief was not liable to be granted at

that point of time and in view of the dissolution of the assembly itself. Feeling aggrieved by the setting aside of his election on the ground that he did not belong to a scheduled tribe, the appellant has filed this appeal under Section 116-A of the Representation of the People Act, 1951.

4. Learned Senior Counsel for the appellant contended that the learned Judge in the High Court was wrong in holding that the decision in E.P. 13 of 1983 did not operate as res judicata and was not conclusive on the status of the appellant. The judgment was one in rem. He alternatively contended that the said judgment operated as a judicial precedent and should have been accepted as such by the learned Judge. It was against judicial discipline for a subsequent Judge assigned to try an election petition, to differ from the conclusion of the High Court rendered in an earlier election petition on the status of the appellant and judicial discipline warranted that the matter should have been referred to a Division Bench for decision, in case the judge was inclined to disagree. Though, he faintly raised the contention that the issue of the certificate under the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993 was conclusive and binding on the proceedings under the Representation of the People Act, 1951, he did not seriously pursue that contention, obviously because of the fact that the certificate issued under that Act served a different purpose and could not stand in the way of an election petition filed under the Representation of the People Act, 1951 being tried in accordance with law by the High Court. On facts, he submitted that the High Court was in error in its appreciation of the evidence and the finding that the appellant did not belong to the "Konda Dora" tribe was clearly erroneous. He emphasized that merely because a person belonging to a Scheduled Tribe described himself as a 'Kshatriya' or claimed to be a 'Kshatriya', he would not become a 'Kshatriya' or cease to be a tribal and this aspect has not been properly appreciated by the learned Judge. He ultimately submitted that the appreciation of the evidence by the learned Judge was perverse and important pieces of evidence have been ignored or not given the weight they deserved. The admissions extracted from the witnesses examined on behalf of the election petitioner and the deposition of the witnesses examined on behalf of the appellant and their impact on the relevant question, have not been considered properly by the election judge. He submitted that the decision under appeal suffers from innumerable infirmities and required to be set aside by this Court in appeal.

5. Learned counsel for the first respondent, on the other hand, contended that it has been found by the order dated 13.12.2002, that the decision in E.P. 13 of 1983 did not operate as res judicata and was not conclusive on the tribal status of the appellant and that the certificate obtained under the State Act was not conclusive on the election tribunal and that those findings have become final and have been approved by this Court by dismissing the petitions for special leave to appeal filed by the appellant challenging that order. He submitted that it was not open to the appellant to raise those questions all over again in this appeal. Even otherwise, the finding in E.P. 13 of 1983 was only to the effect that the election petitioner therein, had failed to prove that the appellant did not belong to a scheduled tribe or that he belonged to the 'Kshatriya' caste and that did not amount to a declaration of the status of the appellant as belonging to the "Konda Dora" tribe. He submitted that every election furnishes a fresh cause of action and the finding in an election petition relating to an earlier election to which the present election petitioner was not even a party, does not operate as res judicata and does not even have any evidentiary value. He submitted that a series of documents have been produced which contained admissions by the predecessors of the appellant and by the

appellant that they were 'Kshatriyas' and those admissions were conclusive as against the appellant, since he was not in a position to show that they were wrong or to explain them away except stating that they wanted to claim a higher status for prestige. He pointed out tht the documents were spread over for a number of years. He also pointed out that the appellant had admitted that in his school leaving certificate book, his caste has been shown as 'Kshatriya' and since that piece of evidence was almost conclusive, there was no reason to interfere with the finding of the learned Judge that the appellant did not belong to the "Konda Dora"

> tribe. He finally submitted that in the face of the admissions contained in documents of unimpeachable authenticity, the burden had shifted to the appellant to show that he belongs to the "Konda Dora" tribe and that the admissions earlier made, were wrong. He submitted that on a proper appreciation of evidence in the case, the learned Judge has rightly come to the conclusion that the appellant was ineligible to contest from a reserved constituency and there was no reason for this Court to interfere with that decision. He prayed for a dismissal of the appeal.

6. First, we will deal with the contention based on the adjudication in E.P. 13 of 1983. That was an election petition relating to an earlier election in respect of the same assembly constituency filed by a voter challenging the eligibility of the appellant to contest as belonging to a Scheduled Tribe. The learned Judge noticed that the election petitioner had not examined anyone belonging to the 'Kshatriya' community to show that the appellant had been accepted as a 'Kshatriya' and had also not led adequate evidence to show that the appellant was not accepted as a member of the "Konda Dora" tribe. In his view, the explanation of the appellant that they had claimed the status as 'Kshatriyas' only for prestige was adequate to wipe out the effect of the consistent admissions contained in some documents and the entry in the secondary school leaving certificate. It was thus held that the election petitioner therein, had not chosen to lead any evidence worth the name to show that the appellant was a 'Kshatriya' and he had only tried to pick holes in the evidence adduced on the side of the appellant. In the light of the evidence on the side of the appellant, it had to be held that the appellant belonged to the "Konda Dora" tribe and that his nomination was rightly accepted.

7. Before proceeding to consider this question, it requires to be noticed that at the instance of the appellant, the learned Judge had held by his order dated 13.12.2002, that the adjudication in E.P. 13 of 1983 did not operate as res judicata and was not conclusive on the question of the status of the appellant. That order had been challenged before this Court in Petitions For Special Leave To Appeal (Civil) Nos. 1438-1439 of 2003. Though, this Court had not given reasons, this Court had dismissed those Petitions for Special Leave to Appeal by order dated 7.2.2003 without granting liberty to the appellant to challenge the findings while challenging the final decision, if it became necessary. Whether there be a merger of the order of the High Court with the order of this Court or not (the present view is that there is no merger), as far as the present proceedings are concerned, would it not be conclusive as against the appellant? This Court is only a court of co-equal jurisdiction and is normally bound to respect its own earlier orders. Similarly, the High Court also could not reconsider the issues after trial. If the appellant had not challenged the order made by the learned Judge then and there, he could have set out a challenge to the order dated 13.12.2002 in the present memorandum of appeal as envisaged by the principle recognized in Section 105 (1) of the

Code of Civil Procedure, 1908 (the Code, of course, does not stricto sensu apply to these proceedings). In the present appeal, though the appellant had raised a ground that the judgment in E.P. 13 of 1983 is a judgment in rem and it consequently precluded the High Court from going against that decision, he has not set out a specific challenge to the order dated 13.12.2002. Really, it is possible to say that as far as the present appeal is concerned, the appellant is not entitled to raise the questions covered by the order leading to SLP (C) Nos. 1438-1439 of 2003, in view of the dismissal of those petitions.

8. But, we do not think it necessary to rest our decision on that ground alone. Even otherwise, the plea that the earlier adjudication operated as res judicata is difficult of acceptance. The first respondent herein, the petitioner in the present election petition, was not a party to the prior election petition. This Court in C.M. Arumugam Vs. S. Rajgopal and Ors. [(1976) 1 SCC 863] has held that every election furnishes a fresh cause of action for a challenge to that election and an adjudication in a prior election petition cannot be conclusive in the subsequent proceeding. Res judicata is nothing but the merger of a cause of action in a decree, transit in rem judicatum. So, even if the cause of action in the earlier election petition merged in the final adjudication therein, since according to this Court, the subsequent election furnishes a fresh cause of action, the merger of the earlier cause of action with the decision therein cannot bar the trial of the fresh cause of action arising out of subsequent election. It is true that the earlier election petition was filed by a voter in the constituency concerned and he had also raised the plea that the appellant did not belong to the "Konda Dora"

> community. An election petition filed, though it abates on the death of the petitioner therein, could be pursued by another person coming forward to prosecute that election petition as enjoined by Section 112 of the Act. But that does not make an election petition a representative action in the sense in which it is understood in law. Therefore, normally, the adjudication in an election petition, not inter-parties, cannot operate as res judicata in a subsequent election petition challenging that subsequent election.

9. The appellant could have invoked explanation VI to Section 11 of the Code of Civil Procedure if it were possible to hold that the person who was the petitioner in E.P. 13 of 1983, was litigating in respect of a public right or of a private right claimed in common for himself and others and he was also bona fide litigating therein. Though, as noticed earlier, Section 112 of the Representation of the People Act gives any other voter the right to come forward and pursue E.P. 13 of 1983, the prior election petition, in case the petitioner therein died and the election petition abated, on that basis alone, the earlier action cannot be understood to be a representative action so as to attract explanation VI to Section 11 of the Code of Civil Procedure. We do not think it necessary to advert to the authorities on the scope of explanation VI to Section 11 and the nature of litigations prior and subsequent, to which that explanation would have relevance. Suffice it to say that the plea of res judicata raised by counsel for the appellant cannot be sustained. The appellant, therefore, cannot rely on Section 40 of the Evidence Act.

10. The contention that the judgment in E.P. 13 of 1983 is a judgment in rem also cannot be accepted. Under the Indian Evidence Act Section 41 is said to incorporate the law on the subject. A judgment in rem is defined in English Law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject matter by a tribunal having competent authority for that purpose". Spencer Bower on Res Judicata defines the term as one which "declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally". An election petition under Section 80 of the Representation of the People Act, 1951 cannot be held to lead to an adjudication which declares, defines or otherwise determines the status of a person or a jural relation of that person to the world generally. It is merely an adjudication of a statutory challenge on the question whether the election of the successful candidate is liable to be voided on any of the grounds available under Section 100 of the Representation of the People Act, 1951. It is not an action for establishing the status of a person. It is not an action initiated by a person to have his status established or his jural relationship to the world generally established, to borrow the language of Spencer Bower. No doubt in E.P. 13 of 1983, the question was whether the election petitioner therein who alleged that the appellant before us was not qualified to contest as a candidate belonging to a Scheduled Tribe, in a constituency reserved for that tribe and to that extent, having relationship to the status of the appellant. In such an action under the Representation of the People Act, 1951 what is decided is whether the election petitioner had succeeded in establishing that the successful candidate belonged to a caste or community, that was not included in the Scheduled Tribes Order. In a case where the election petitioner failed to establish his claim, it could not be said that it amounted to a declaration of the status of the respondent in that election petition, the successful candidate and that such a finding on status would operate as a judgment in rem so as to bind the whole world. It is also not one of the judgments specifically recognized by Section 41 of the Evidence Act. It has been held that the challenge to an election is only a statutory right. An election petition is not a suit of a general nature or a representative action for adjudication of the status of a person. Even if we take it that the earlier judgment is admissible in the evidence, on that, no objection was raised even at the trial, it could be brought in under Section 42 of the Evidence Act on the basis that it relates to a matter of a public nature or under Section 43 of the Evidence Act. In either case, not being inter-parties, the best status that can be assigned to it is to say that it is of high evidentiary value, while considering the case of the parties in the present election petition.

11. In fact, learned senior counsel concentrated his fire on the contention that the earlier judgment in E.P. 13 of 1983 is a judgment in rem. He referred to the decision in Inamati Mallappa Basappa vs. Desai Basavaraj Ayyappa and othersb (1959 SCR 611). He relied on the portions of the judgment wherein their Lordships indicated the nature and scope of an election petition. Quoting from the decision in K. Kamaraja Nadar vs. Kunju Thevar and others (1959 SCR 583) their Lordships held that an election petition is not a matter in which the persons interested are the candidates who strove against each other at the elections. The public also are substantially interested in it and this is not merely in the sense that an election has news value. An election is an essential part of democratic process. An election petition is not a suit between two persons but is a proceeding in which the constituency itself is the principal party interested. He also referred to the decision of the Madras High Court in A. Sreenivasan vs. Election tribunal, Madras and anotherb (Vol.XI E.L.R. 278) wherein the above two decisions were followed.

12. With respect to learned senior counsel, these decisions do not show that the judgment in an election petition could be treated as a judgment in rem. Obviously, the whole of the constituency concerned is interested in the outcome of an election petition, since it either affects the choice they have already made, or their right to have the freedom of a fresh choice. But since a challenge to an election petition is only a statutory challenge under the Representation of the People Act and since the acceptance of the challenge or the rejection of it in a given case would be based on facts and law available therein, and since an adjudication therein is not one which comes directly within the purview of Section 41 of the Act, the same could not be treated as a judgment in rem. In fact, if it were a judgment in rem, the ratio of the decision of this Court in C.M. Arumugam Vs. S. Rajgopal and Ors. [(1976) 1 SCC 863] earlier referred to, would not have been rendered, since the adjudication in the earlier election petition would have barred the consideration of the question even if it be based on additional facts. We, therefore, overrule the argument that the judgment in E.P. 13 of 1983, should be held to be a judgment in rem binding on the whole world including the election petitioner herein, even though he was not a party to the earlier proceeding.

13. The argument that the earlier decision must be treated to be a judicial precedent cannot also be accepted. The decision in the earlier election petition depended upon the pleadings and the evidence adduced in that case and their appreciation. The essential finding was that the election petitioner therein had not established the plea set up by him. It was not a case where a particular document was interpreted in a particular manner by the highest court of the land and the interpretation of the same document was again involved in a subsequent litigation between those who were not parties to the earlier litigation. In Kharkan and others vs. State of Uttar Pradesh (AIR 1965 SC 83) this Court held that an earlier judgment can only be relevant if it fulfills the conditions laid down by the Indian Evidence Act in Sections 40 to 43. The earlier judgment is, no doubt, admissible to show the parties and the decision but it is not admissible for the purpose of relying upon the appreciation of the evidence. What happened in E.P. 13 of 1983was that the documentary and oral evidence adduced in that case were appreciated by the High Court and the learned Judge came to the conclusion that the election petitioner had failed to prove that the present appellant did not belong to a Scheduled Tribe. No doubt, at the end of the judgment, there was also a sentence to the effect that the appellant belonged to a Scheduled Tribe. What we intend to point out is that, that appreciation of evidence has no relevance in the present election petition and, in our view, the High Court rightly held that the present election petition has to be tried on the pleadings and the evidence available in this case.

14. Now we will come to the merits of the case. The evidence on the side of the election petitioner consisted of Exhibits A1 to A27 and the oral evidence of PWs 1 to 8. Exhibits C1 to C10 were also cited and marked through CW1. On behalf of the appellant, Exhibits B1 to B5 were marked and RWs1 to 9 were examined. The learned Judge trying the election petition, held rightly that the initial burden was on the election petitioner to substantiate his assertion that the appellant did not belong to a Scheduled Tribe and was not entitled to contest from a constituency reserved for Scheduled Tribes. On the basis of Exhibits A2 to A11 read with Exhibits A23, the oral evidence on the side of election petitioner, the learned Judge held that the burden had shifted to the appellant to show that he belonged to a Scheduled Tribe, namely, the Konda Dora Tribe. The learned Judge noticed that the appellant had not adduced any documentary evidence to establish that he belonged to the Konda Dora Tribe. He held that the Gazetteer and the other historic materials produced by the appellant,

did not show that the family of the appellant belonged to the Konda Dora Tribe. The oral evidence on the side of the appellant was not sufficient to establish that the appellant belonged to the Konda Dora Tribe. On the other hand, there were a series of documents executed by the members of the family of the appellant and by the appellant containing an assertion that the family was a 'Kshatriya' family and the school leaving certificates of the appellant and that of his paternal cousin, indicated that he and the appellant were 'Kshatriyas' and hence did not belong to a Scheduled Tribe and since these assertions were admissions in the present case and were not rebutted or shown to be a wrong by the appellant, it must be held that the election petitioner had established that the appellant did not belong to a Scheduled Tribe. The learned Judge, therefore, allowed the election petition and declared the election of the appellant from the concerned constituency, void.

15. Learned senior counsel for the appellant made a strenuous attempt to contend that the learned Judge of the High Court had wrongly placed the burden of proof in the case. We cannot agree. The trial judge has rightly proceeded on the basis that the initial burden was on the election petitioner to establish his plea that the appellant did not belong to a Scheduled Tribe. Though in a prior statement, an assertion in one's own interest, may not be evidence, a prior statement, adverse to one's interest would be evidence. In fact, it would be the best evidence the opposite party can rely upon. Therefore, in the present case, where the appellant is pleading that he is a Konda Dora, the statement in the series of documents, pre-constitution and post constitution, executed by his ancestors and members of his family including himself describing themselves as 'Kshatriyas', would operate as admissions against the interest of the appellant in the present case. These admissions also strengthened the admission of the appellant that in his school leaving certificate also, he is described as a 'Kshatriya' and his paternal uncle's son is also described as a 'Kshatriya' in his school leaving certificate and that uncle's son was also held to be a 'Kshatriya' on an enquiry made in that behalf. Therefore, in our view, the trial judge was correct in holding that the election petitioner had discharged the initial burden placed on him and the burden shifted to the appellant to establish that he belonged to the 'Konda Dora' Tribe.

16. Appreciating the evidence on the side of the appellant, the trial judge held that no document has been produced by him to show that the appellant belonged to a Scheduled Tribe or that earlier, their claims have been recognized as a Scheduled Tribe except the judgment in E.P. 13 of 1983. The trial Judge having taken the view that the judgment in E.P. 13 of 1983 would not operate as a res judicata and could not be taken to be a judgment in rem, proceeded to hold that even though in that case an election petitioner therein had failed to establish that the appellant was not a Konda Dora, in the present case, the available evidence indicated that the family of the appellant did not belong to the Konda Dora Tribe. The trial judge found that the evidence of RWs 1 to 9 was not adequate to establish that the appellant was a Konda Dora. Having gone through the evidence of RWs 1 to 9 we also agree with the trial judge that the evidence of RWs 1 to 9 is totally insufficient to establish that the appellant belonged to the Konda Dora Tribe. On a scrutiny of the evidence of PWs 1 to 8, also, we do not see anything in their evidence that would justify our holding that the appellant has established his claim.

17. In this position, learned counsel for the appellant submitted that the gazetteer and the historical documents produced on the side of the appellant clearly showed that the appellant belonged to the

Konda Dora Tribe. We must say that the High Court has considered these materials in detail and has found that even going by those materials the best that could be said on behalf of the appellant was that the family of the appellant, the Marangi family, belonged to Konda Raju caste, but the very material relied by the appellant to show that he belonged to the 'Konda Raju' tribe, also showed that the tribe 'Konda Raju' was different from the tribe 'Konda Dora'. In paragraphs 84 and 85 of his judgment the trial judge has dealt with this aspect. On going through the detailed discussion therein and the materials read out to us by leaned counsel for the appellant, it is not possible to hold that these documents establish that the appellant belonged to the 'Konda Dora' tribe.

18. As against the admissions contained in Exhibits A2 to A11 and the evidence furnished by the other documents produced on behalf of the election petitioner, no positive evidence could be adduced by the appellant to show that he belonged to the Konda Dora Tribe. He relied on a caste certificate issued to him under the Andhra Pradesh (Scheduled Castes Scheduled Tribe and Backward Classes) Regulation of Issue of Community Certificate Act, 1993 in support of his claim. The trial judge found that there was no due enquiry on the application of the appellant for the issue of a caste certificate as prescribed under this Act, and the certificate was issued to him based on a recommendation made the same day as the date of the application, by the concerned authority. On an appreciation of the evidence of CW1 in the light of Ex. C.1 to C.10 the trial judge found that even the application for issuance of the certificate was filled up by the official concerned after obtaining the signature of the applicant therein, the appellant, in a blank form and the certificate was issued without following the proper procedure. CW1 in fact confessed in the court that the certificate was issued because he was told that in view of the decision in E.P. 13 of 1983 he was bound to issue the certificate asked for by the appellant. On going through the evidence of CW1 and on scrutinizing Exhibits C1 to C10 and the reasoning adopted by the trial judge, we are satisfied that the trial judge was fully justified in discarding the caste certificate relied on by the appellant.

19. The evidence of the appellant examined as RW1 clearly shows that the family of the appellant had always considered itself to belong to a superior strata of society and as a ruling or satrap family. The title of 'Satrucharala', conqueror of enemies, had been conferred on an ancestor of the appellant and the members of the family were using that title. The evidence of PWs 1 to 8 and RWs 1 to 9 shows that most of the practices followed by the family differed from that of 'Konda Doras'. In fact, learned counsel for the appellant could only emphasis that there was no evidence to show that 'Homa' and 'Saptapadi', the essentials of a 'Kshatriya' marriage were being performed in the marriages in the family. But learned counsel could not contradict that the male members were having thread ceremony. No doubt, mere assertion or a claim by a tribal that he is a 'Kshatriya' cannot make him a 'Kshatriya'. But what is involved here is a series of assertions which are admissions in terms of the Evidence Act and other evidence that tribal customs differed from the practices of the family of the appellant. The position in V.V. Giri Vs. Dippala Suri Dora and ors. [(1960) 1 SCR 426] differs, in that, in that case, Dora was admitted to be originally a tribal and what was asserted was that subsequently, he had become a 'Kshatriya', having adopted their customs and practices. That is not the case here and there is no admission in this case that the family of the appellant originally was tribal. Evidence in the case on hand also indicates that the family of the appellant had marital relationship mostly with the Zamindar families outside the present State of Andhra Pradesh and their way of life was also not that of the tribals. No positive acceptable evidence

could also be adduced to show that the family entered into marital relationship with 'Konda Dora' tribals. The evidence also shows that the family of the appellant did not have any close relationship with the Konda Doras of the locality. The admissions of RW.1 show that quite a few of the customs the family was following had no relations to the customs generally followed by the Konda Dora Tribe and some of the practices clearly differed from that of the tribe and was more consistent with the practices followed by Kshatriya and higher castes. The trial judge has carefully analysed these aspects and we do not see any justification in differing from his appreciation of the oral as well as documentary evidence in the case.

20. In a sense, the appellant wants the best of two worlds. Though, he would like to contest from a constituency reserved for the Scheduled Tribes, he would want to lead the life of a forward caste and have the trappings of that caste. The purpose of reservation of constituencies is to ensure representation in the legislatures to such tribes and castes who are deemed to require special efforts for their upliftment. The person seeking election from such constituencies must be the true representative of that tribe. The evidence shows that the appellant could not be considered to be a true representative of a tribe included in the Presidential Order deserving special protection.

21. What we are left with is the high evidentiary value that may be attached to the judgment in E.P. 13 of 1983. It is true that some of the documents produced in the present election petition, were also available before the judge assigned to try the previous case. But ultimately the conclusion in the previous case was based on an appreciation of the evidence adduced in that case. Some evidence may be common. But, since it is not possible to accept the contention that the earlier judgment is a judgment in rem or that it would operate as res judicata, we can at best proceed on the basis that on an earlier occasion, it was adjudicated that he was not shown to be disqualified to contest from a reserved constituency. But as emphasized by learned counsel for the election petitioner-respondent, that was a conclusion arrived at based on an appreciation of the evidence in that case and once that judgment could not be held to be a judgment in rem binding on the whole world or a judgment that bars the trial of the issue in the present election petition or would operate as res judicata between the parties, that judgment by itself is not sufficient to rebut the evidence available in the present case based on which the finding has been rendered.

22. Thus, on the whole, on a re-appreciation of the pleadings and the evidence in the case, in the light of the law governing the matter, we are satisfied that the decision of the trial court does not call for any interference. We, therefore, confirm the decision of the trial court and dismiss this appeal with costs.