

(1965) 08 OHC CK 0011

In the Orissa High Court

Case No : Civil Revision No. 110 of 1964

Bairagi Mekap and Another

APPELLANT

Vs

Jagannath Temple Managing Committee

RESPONDENT

Date of Decision : 06-08-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Sri Jagannath Temple (Administration) Act, 1952 — Section 29

Citation : AIR 1966 Ori 96

Hon'ble Judges : K. Ahmad, C.J

Bench : Single Bench

Advocate : M. Mohanty and N.K. Misra, for the Appellant; R.N. Misra and R.C. Patnaik, for the Respondent

Final Decision : Allowed

Judgement

K. Ahmad, C.J.—This Civil Revision is by the plaintiffs. It is directed against the order dated 14-3-1964 passed by Shri B. R. Rao, District Judge, Puri, whereby the learned District Judge has set aside the order of the trial court allowing interim injunction as prayed for and thereby restraining the defendant from interfering with the rights of the plaintiffs as claimed in the plaint. The suit is still pending for disposal. That has been instituted for a declaration that plaintiff No. 1 Bairagi Mekap representing all the members of the Mekap Nijog and plaintiff No. 2 Madhusudhna Khuntia representing all the members of the Khuntia Nijog of Lord Jagannath have the exclusive right to collect Bhetas or Pindikas in the temple of Lord Jagannath from the Aruna Stambha to the Ratnasinhasan in Thalias, Parakha and Jharis and for a mandatory injunction restraining the defendant temple committee from interfering with this right of the plaintiffs and from collecting the Bhetas or Pindikas through the Committee's Administrator in boxes. During the pendency of the suit an application was filed by the plaintiffs for an interim injunction as provided in order 39, Rule 1 of the Code of Civil Procedure. The trial court having heard the parties held that,

"The plaintiffs have made out a prima facie case in their favour. I further find that the status quo ante of the previous arrangement should continue till the disposal of the suit. So far as balance of convenience is concerned, it having been admitted by the opposite party that the petitioners had the right to hold Thalia, Parakhs and Jharis for collection of Bheta and Pindika, I would find that the balance of convenience lies in favour of the petitioners and that they would suffer irreparable injury in case injunction would be refused, inasmuch as valuable right of the plaintiffs would be suspended in case injunction would be refused."

It may be stated here that though there was an opposition made on behalf of the defendant against the application filed by the plaintiffs for interim injunction, it was substantially admitted as found by the lower appellate court also that the plaintiffs had the right to collect Bhetas or Pindakas in the temple of Lord Jagannath. In fact the defendant went to the length of saying that he did not dispute this right of the plaintiffs. But the case set up by the defendant was that the new procedure adopted for collecting Bhetas and Pindikas through boxes was to safeguard the interest of the deity and the same was required for the better management of the temple affairs. The trial Court did not for the purpose of the application filed by the plaintiffs agree with this plea of defendant. In appeal the lower appellate Court does not concede that the exercise of discretion made by the trial court should not ordinarily be set aside in appeal. But it seems to think that the trial Court in passing the order which he did failed to take into consideration some of the important circumstances and rule of law which have relevant bearing on the matter. Accordingly in the light of those important circumstances and rule of law the lower appellate Court has finally reversed the order of the trial Court.

2. In my opinion, the circumstance and rule of law which have been pointed out by the lower appellate Court in reversing the order of the trial Court are not at all correct. It is true that the defendant committee has been constituted under a legislation passed by the provincial legislature and therefore they have certain rights and duties assigned to them thereunder. But at the same time it is not denied that the rights of the plaintiffs as claimed in the plaint have been already recognised in several litigations and even in the record-of-rights prepared under Act XIV of 1952. Therefore for the plaintiff it was enough to show that till the date when these rights were disturbed by the defendant committee they were continually enjoying the same and not to prove also that the order passed by the defendant directing that the collections should be made in boxes instead of Thalish, Parakhas and Jharis was illegal and unjustified. But unfortunately the Court below has in reversing the order held that that was also necessary on the part of the plaintiffs to establish. In my opinion, this view of law taken by the Court below cannot be sustained.

The second ground given by the lower appellate Court is that though the replacement of Thalish and Parakhs by boxes may be an innovation introduced by the committee but this innovation is only in the mode of preserving or

safeguarding the collections and not in the mode of collections. Factually speaking this may be so. But at the same time it cannot be ignored that as this right has been enjoyed by the plaintiffs from time immemorial and that too in a manner religious it is difficult to say that the innovation however useful from the administrative point of view has not affected the right which the plaintiffs have been enjoying for such a long time in the temple of Lord Jagannath.

The third point given by the learned District Judge in respect of this order is that the defendant challenges the jurisdiction of the Civil court and when there is some support under the Act for this contention, discretion should have been exercised against the plaintiffs by not issuing the injunction. Perhaps in making this observation the lower appellate Court was under the impression as provided in Section 29 of the Act under consideration that no suit or proceeding will lie in any court against the committee or the administrator for anything done or purported to be done by any of them under the provisions of the Act. But this Section 29 relates to things done or purported to be done under the Act. If there is anything which is not permissible to be done under the Act, that cannot be said to be a matter which is not open to be agitated in the Civil Court. Here the question is whether the right which the plaintiffs have been enjoying from time immemorial is a right which can be altered or changed by the defendant committee in the exercise of the power given to it under the Act. Prima facie once it is found and it is admitted that the right as claimed by the plaintiffs is being enjoyed by them, I think the balance of convenience has to be held in their favour and not in favour of the defendant committee unless it is conclusively established by the defendant committee that it has the authority to alter the mode of management.

Lastly the lower appellate Court has also taken a very queer view in regard to the doctrine of status quo. It is well established in law that status quo ante is in relation to the time when the cause of action arises and not in relation to a subsequent point of time when the wrong has already been committed. Therefore in this case the question of status quo should have been considered in relation to the time when the alteration in the mode of collection was effected by the defendant committee and not in relation to the time when the suit was instituted. For these reasons it is quite obvious that the Court below in exercise of its jurisdiction as a Court of appeal has proceeded on wrong assumption which cannot be maintained in law. As such, in my opinion, the order has substantially resulted in the wrong exercise of jurisdiction.

I therefore hold that the application should be allowed, the order of the learned District Judge should be set aside and that of the Munsif should be restored. It is however necessary that in the meantime efforts should be made to dispose of the hearing of the suit as early as possible. It has been agreed before me by Mr. Misra appearing for the defendant and by Mr. Mohanty appearing for the plaintiffs that the suit should be taken up for hearing within two months from today.

3. I hope in view of this agreement the Court will take up hearing of the case

within two months from today and dispose it of as early as possible. In the meantime the application is disposed of in terms as stated above. But in the circumstances of the case there will be no order for costs. Before however I close the case I must make it clear that any observations made by me in this order will not be taken as either conclusive or binding on the parties or the Court in the final disposal of the case on merits.