
(1952) 01 OHC CK 0006

In the Orissa High Court

Case No : First Appeals No"s. 14 and 15 of 1947

Bala Krishna Kar

APPELLANT

Vs

Ganesh Prasad Bhagat and others

RESPONDENT

Date of Decision : 29-01-1952

Acts Referred:

Orissa Hindu Religious Endowments Act, 1939 — Section 64(2)

Citation : AIR 1952 Ori 203

Hon'ble Judges : Das, C.J.;Panigrahi, J

Bench : Division Bench

Advocate : B. Mohapatra, for the Appellant; R.K. Das and S. Misra, for the Respondent

Judgement

Panigrahi, J.—These two consolidated appeals arise out of two suits tried together by the Subordinate Judge, Cuttack, and are covered by the same judgment. Title Suit No. 32 of 1944 was filed by Ganesh Prasad Bhagat and others (hereinafter referred to as the plaintiffs) against the appellant, as representing the public, for a declaration that the suit temple of Baldev Jieu and the endowments connected therewith, in Jaginlpur Zamindari, are the private "Devotter" properties of the plaintiffs, and that the order passed by the Commissioner of Hindu Religious Endowments, under Sub-section (2) of Section 64 of the Orissa Hindu Religious Endowments Act 1939 (Orissa Act IV (4) of 1939) declaring the said temple to be an "excepted temple" is wrong.

Title Suit No. 11 of 1945 is a representative suit filed by Balakrushna Kar, the appellant before us on behalf of the general public, against the Bhagatas, plaintiffs in Title Suit No. 32 of 1944, for a declaration that the suit temple and its endowments are the public endowments, and that the order of the Commissioner declaring the temple to be an "excepted temple" is erroneous and should be set aside. In both the suits, the main question that arises for decision is about the character of the suit temple, and whether the plaintiffs are the hereditary trustees thereof.

2. The learned Subordinate Judge found that the temple and the endowments attached to it are the private "Devotter" properties of the plaintiffs and set aside the order of the Endowments Commissioner. He declared the plaintiff's suit and dismissed the suit filed by Balakrushna Kar. The present appeals have been filed against these judgments.

3. The case for the plaintiffs in Title Suit No. 32 of 1944 is that Baldev Jieu, Jagannath, subhadra and Sudarsan, were the family idols of an up-country ascetic living at Puri and that he gave the idols to his "Pujari", a Brahmin of Jaginipur, who took them to his village, and, after performing the "seba puja" for some time, made them over to a Sanyasi who owned extensive properties including the zamindari of Jaginipur. The Sanyashi, it is said belonged to the Bharati Sect of the Dasnami Order and styled himself as Tapanidhi Goswami.

It is alleged that these Goswamis belonging to the Bharati cult, marry and beget children and generally lead the life of a "gruhastha" and their sons are known as "chelas" and their residence is known as "Mutt." One Topandhi Purusottam Goswami who had five sons executed a deed of gift described as a "Danachopa" dated 29-7-1856 (Ex. 4) by which he dedicated his village of Jaginipur to the deities mentioned above and created an endowment in favour of the deities. He also appointed four of his sons and his grandson (the son of a predeceased son), as the trustees for conducting the daily worship of the Deities and the usual festivals connected with that worship.

It is said that the temple in which the idols are installed, as well as a tank known as Chandan Tank were constructed during the time of the Bharatis. The plaintiffs subsequently acquired the zamindari of Jaginipur and other properties of the deities, together with the right of worship, by several deeds of sale and through Court sales, between the years 1908 and 1938, from the five branches of Purusottam Goswami, the creator of the endowment.

(His Lordship reviewed the evidence on both sides and proceeded :)

(4-6) On a review of the entire evidence on both sides the following facts emerge:

(1) The origin of the installation of the deities in the temple in question is lost in obscurity;

(2) The idols have been in existence for about 200 years and are taken out in procession on particular occasions;

(3) They have acquired a local reputation and are regarded as the presiding deities of several villages around;

(4) They are located in a temple of massive structure which belongs to the same class of architecture as we find in public temples. The temple is enclosed by a compound wall;

(5) The daily worship or "niti" is conducted on lines to those prevailing in public

temples;

(6) Within the compound there is a Mahadeo Mandir and other idols such as Laxmi, Radhakrishna, etc., and a "Gurudasthamba." There is also a "Dol-Bedi" near main gate of the temple besides a "Debsnan Mandap";

(7) At the entrance of the main temple itself there is a miniature temple which is usually designated "Gopuram" or "Mukhasala" and there is a painting of "patitapaban.";

(8) There is a "Gundicha-Ghar" where the idols are taken during the "Ratha-Jatra", and a "Basanta-Bagicha" where Basanta Panchami is held;

(9) The festivals connected with the temple such as "Dol", "Snan-Purnima", "Ratha-Jatra", "Chandan-Jatra", etc., are all such as are associated with public temples;

(10) There is tank known as "Chandan Tank just outside the temple where the idols have their "Jatra", and "Mela" is held where several other deities congregate on particular occasions;

(11) The "Pahandi" of the deities performed by Brahmins of the neighbouring villages and the "sebaks" of the deities;

(12) The car is pulled by the public who visit the idols on the occasions of the "Ratha-Jatra.";

(13) There are hereditary "sebaks" enjoying grants of lands for doing "seva-puja." Their houses are situated on one side of the main road known as "Ratha Danda" and are close to the temple;

(14) There are other "sebaks" attached to the temple such as Drummer, torch-bearer, washerman, Crior, Umbrella-bearer, "Khalia or Bugler. "Kirtania", etc., who are remunerated either by grants of land or by payment of wages in cash;

(15) The public offer "bhog" not only on special occasions like festivals, but whenever they choose to visit the temple.

(16) There has been no single instance of any servant having been dismissed or any member of the public having ever been refused permission to visit the temple;

(17) The daily "bhog" of the deities is met from the income of the lands which have been endowed for the purpose. The lands constituting the endowment are either revenue-free or are subject to quit-rent;

(18) The daily offerings made "to the Deity are divided among the "sebaks" according to a definite prescribed scale, namely 9 annas, and the rest is taken out for distribution;

(19) There is a total absence of evidence on the side of the plaintiffs as to

whether and, if so, how much, they contribute for the maintenance of the temple or for the worship of the idols at all. On the other hand, it is clear from the evidence that they have no beneficial interest in the properties attached to the temple;

(20) The Pujaries do the worship by turns and have divided the neighbouring villages into "Jajmans.":

(21) The temple has a main door, with a trapdoor in it, facing the "Ratha Danda" which is 1,000 cubits in length, a feature unusual in a private temple.

7. The plaintiffs mainly rely upon the terms of Ex. 4 the Danchopa of the year 1856. That document freely translated runs as follows:

I, Tapanidhi Purusottam Bharati Goswamy, Chela of Swarupa Bharati Goswami, residing at Balibazar, Cuttack, make out of my own free will, this deed of arrangement as follows. From the time of my ancestors we have a "seba" of Sree Baldev, Jagannath, Subhadra and Sudarshan in Jaginipur. The zamindari of Jaginipur, whose "Sadar Jama" is Rs. 596-15-4 is recorded in my name in the Collectors "shoristha", and I am in absolute ownership and possession of the same. Now, for meeting the expenses of daily worship festivals, etc., of the reputed Thakurs, I give the above zamindari as "Devotter" to my "Chelas" Balkrushna Bharati, Baishnaba Bharati, grand-Chela Hrudananda Bharati & Chelas Bhagaban, Bharati and Bhawani Shankar Bharati as "sebayats, together with the idols. I also hand over the zamindari to the aforesaid "sebayats".

My desire is that the said "sebayats" shall pay the Government dues, collect the dues of the zamindari including "Jalkar, Bankar and Phalkar as the Devotter of the said Thakurs, and spend the same for the daily worship, festivals, etc.; and all the five "sebayats" shall properly look after the "seba" of the Thakurs. The entire income out of the zamindari shall be spent for Thakur "seba", and not any other purpose and shall not be misappropriated. If any of the "sebayats" misappropriates or misspends any portion of the income for his own purpose, then that person shall be removed from the management of the zamindari and from the "seba" of the Thakurs. None of the "sebayats" can sell, gift away, mortgage or alienate it, in any other way. The zamindari shall be the absolute "devotter" of the Thakurs and the "sebayats" shall have no right except to perform the "seba" of the Thakurs; None of my heirs or reversioners shall have claim to the zamindari.

It would appear from the above document that the idols had been installed; and that they had acquired a local reputation, by the time the "Dan chop" was executed and that Purusottam Bharati and his ancestors had the right of worship in the temple. The document does not say that the donor had installed the deity or built the temple. All that the donor appears to have done is to dedicate the lands appertaining to the zamindari to the idols for meeting the expenses of their daily "bhog", festivals etc. He did not retain any interest in the zamindari & he expressly directed his heirs, whom he constituted trustees of the endowment,

to utilise the entire income for the purpose of deity. They are expressly enjoined not to misappropriate any portion of the income or to utilise it for their own purpose.

Curiously enough, the learned Subordinate Judge misread the document Ext. 4. He appears to have gained the impression that the donor, Purushottam Bharati, installed the deities in question in the village of Jaginipur. I can find no mention of any such claim in the document. He expressly says that he had only the "seva-puja" of the deities from the time of his ancestors. This means that he had only the hereditary right of worship. The learned Subordinate Judge makes reference to this document at more than one place in his judgment, but throughout he seems to have laboured under a wrong impression, and this impression appears to have obscured his appreciation of the evidence. At page 58 (line 33) of the Printed Paper Book (Part I and ID he says:

that the deities Balabhadra, Jagannath, Subhadra and Sudarsana, were founded in Jaginipur by the ancestors of Tapanidhi Purusottam Bharati Goswamy, "chela" of Tapandihi Swarupa Bharati Goswamy, is mentioned by Purushottam Bharati in 1856.

Again, at page 59 line 26 he says:

We, however, get from the document, Ext. 4 of 1856 that the deities were installed in the temple by one Bharati from before 1856, though it cannot be said, with any degree of exactitude how long ago the temple of Baldev Jieu was founded in Jaginipur.

Ext. 4 neither makes any mention of the installation of the deities nor of the construction of the temple. The learned Subordinate Judge came to the conclusion, based on the above two statements made by him that Ext. 4 could not be construed as an express or implied dedication of the temple to the public or as creating a public endowment.

(His Lordship considered other documentary evidence and proceeded).

(8-16) The documentary evidence, therefore, goes to show that item 1 of the plaint schedule properties was granted by Tapanidhi Purusottam Bharati to the deities for the daily "seva puja" and for the conduct of festivals. The descendants of the trustees appointed by him alienated each his undivided interest in the "sebayati" right, and the plaintiffs acquired those interests by the various sale-deeds & through the court-sales. Items 2 to 22 of the plaint schedule properties are those recorded in the name of the deities as "Lakhraj-Bahel." The plaintiffs do not produce any documents to show that these lands belonged at any time to Purusottam Bharati.

Having regard to the fact that the idols had been in existence and presumably also installed in the present temple by the time Ext. 4 was executed it would be but fair to infer that the properties comprised in those items had been the properties of the deities from the income of which the daily expenses of the

deities were being met. Purusottam Bharati being then in management of the properties of the deities and finding that the income was not sufficient to meet the daily expenses, made a dedication of his own properties by Ext. 4 and transferred his trusteeship to his descendants.

17. The Bharatis, as the name indicates belong to the Nihangi or Celibate Order of Sanyasis, though the evidence on the point adduced by the parties appears to be conflicting. The learned Subordinate Judge held that the evidence indicated that the Bharatis were not Sanyasis or celibates, as a class, and that some of them contracted marriages. But whether they were the one or other, it is clear that they did not at any time officiate as the Pujaris or perform the daily seva of the deities themselves.

On the other hand, there is a considerable volume of evidence to show that there have been hereditary Brahmin "Pujaris" from the very beginning. Neither is there any evidence to show that the income out of the properties was ever being used for the maintenance of the Bharatis or the present plaintiffs. It may be that the Bharati "marfatdars" contracted loans on the security of those properties, but the properties themselves were not alienated & what was alienated was only their right to worship.

The learned Subordinate Judge failed to notice that, in all these documents, the share of the alienors" is described as an undivided share and nowhere is there anything to indicate that the properties were ever partitioned as if they had been the private properties of the alienors. He was clearly in error in inferring from these documents that the plaint schedule properties had been partitioned into five equal parts "each branch with its family enjoying and treating them as its personal property" and that, consequently, the dedication was nominal and not real. I do not find anything in the recitals to justify this conclusion.

It was also held by the lower Court that the plaintiffs failed to prove that any member of the public had ever been excluded from worship or that their permission was required to visit the temple and offer worship.

18. The question whether an endowment is public or private has often come up before the Courts) for decision. The well-recognised tests are (1) the nature of the object and purpose of the endowment; (2) the nature of the dedication, that is, whether it is open to the public generally or not; (3) the authority of the donor to divert the funds; (4) the existence of any reversionary right in the donor and (5) the user by the public. The evidence adduced in the case shows that the dedication by Purusottam Bharati under Ex. 4 was for meeting the expenses of the "sevapuja" and the festivals of the deity. The public have unrestricted access to the temple and all classes of the public visit the temple and also make offerings without any restraint being imposed by the trustees. The donor of item 1 of the schedule properties expressly directed that the income of the properties should be solely devoted towards the worship of the deities and that they should not be diverted for any other purpose. The donor retained no

reversionary interest in the properties and the dedication was absolute.

The subsequent treatment of the property shows that the income has been used solely for the support of the temple and that the remainder of the "bhog", after allotment of the share of the "pujaris", is distributed by the trustees. The temple itself, besides being of huge dimensions, is situated outside the dwelling-house of the grantor. So far as can be gleaned from the evidence the donor was residing at Cuttack when he made the gift of the zamindari, and there is no evidence at all as to how the suit items 2 to 22 were acquired by the deity, whether before or after the execution of Ex. "4.

Some attempt was made to show that the Bharatis were having a dwelling house at Jaginipur also, and that the site on which that house stood is now the kutchery or the office of the temple. There is, however, no reliable evidence on which a Court can act and come to finding that the Bharatis ever lived at Jaginipur or treated the temple as their family residence. Nor do the plaintiffs who have been in possession of the trusteeship and management of the temple for over 40 years claim to have resided at Jaginipur or conducted the worship of the deities in question. The use which the public have made of the shrine for purpose of worship differs in no single particular from what obtains in other temples. For instance the participation of individuals outside the members of the trustees' family in the festivals connected with the deities and the offerings made by them are inconsistent with its being a private endowment.

The character of the worship is also indicative of the character of the temple. The performance of the "Dol Jatra", "Chandan Jatra" "Rath Jatra" the existence of hereditary "archaks", etc., are all features not associated with a private temple. The learned Subordinate Judge however, while recognising these well-known tests holds, in this case, that as the Bharatis were men of great opulence these characteristics can be easily explained. But it would be a curious inference to draw from these facts that the idols themselves were the family idols of the Bharatis or of the present plaintiffs, when no attempt is made to show that either the previous family or the present family of trustees ever conducted the worship of the deity or interfered with the income of the properties.

Whether the trusteeship, which had originally vested in the Bharatis and subsequently devolved on the plaintiffs, is divisible or inalienable, is not to the point. The very fact that the alienors never claimed to have had any personal interest either in the income or in the offerings strongly suggest that they regarded the properties throughout the period of their management as belonging to the deity, and that it being a public deity they could not later lay their hands either on the properties or on the income. Festivals are celebrated on a large scale and people from remote villages visit the temple. On occasions of "Upanayan" or marriage, they consider it their duty to visit this temple as the deities are considered to be the governing deities of the area. These are inconsistent with the temple being a private one.

It is not a case of holding out or representing to the public that the temple in question is a public one although it is in fact, a private one. On the other hand, the entire evidence both oral & documentary, is consistent with temple being a public temple all along and no single instance proved in the case would support the rival contention. The fact that the management has followed a particular line of descent in the Bharati family, and later on in the plaintiff's family, or that; no member of the public ever took any interest in the management or upkeep of the temple, would not indicate that the temple is the private property of the plaintiffs. No trustee can, by his own acts of mismanagement or repeated alienations contrary to the interests of the trust, convert what is otherwise a public endowment into a family endowment. As the evidence shows members of the public, irrespective of class or creed have been using the temple as a place of worship. It would, therefore, not be wrong to infer that the object of the endowment was for the benefit of an indeterminate body of persons constituting the general public.

19. The fact that there are minor deities all around the main temple such as Lakshmi, Radhakrishna, Mahadeo, and a painting of Patit-Paban at the entrance to the temple, is significant and cannot be easily explained away. The worship of Jagannath at Puri is intended for those who can conceive of Him as the Universal Lord of the World. But for those who are incapable of entertaining this conception of manifestation of the divinity are represented in minor deities which are situated round the temple to satisfy the multitude. The same scheme has been adopted in the suit temple, and I cannot conceive of, nor am I aware of, any family idols being installed round a temple like the suit temple.

Another very significant fact is the lineage of Patit-Paban installed at the entrance of the Temple. At Puri, there is a similar image, at the entrance, for the benefit of the excluded classes, that, is those who cannot gain admission into the temple proper. He is known as the Redeemer of the Fallen as the very name "Patit-Paban" implies. If the suit idols were the family idols of the Bharatis one cannot easily understand why the image of Patita Paban was put up for worship by outsiders.

The creation of the "Gurudasthamba" is another feature which goes against the temple being regarded as a private one. Worshippers are expected to have a view of Lord Jagannath from behind the "Gurudasthamba", and it is not to be expected that members of a family owning the idol would be required to have "Darshan" from behind the "Gurudasthamba". The presence of "Utsava-Vigrahas", which are taken out in procession on occasions of festivals, is yet another strong indication of the public character of the temple.

While, therefore, the general structure and construction of the temple, the presence of the several deities, the observance of the usual rituals and ceremonies connected with the worship of deities, the erection of "Snan-Mandap" or bathing-place and of the "Dol-Mandap", are strong indications of the public character of the temple, I am unable to find any feature at all which would justify the inference of its being the private property of the plaintiffs. The

determination of this question would depend upon the inference to be drawn from proved facts. The plaintiffs have withheld their accounts and we are unable to see how the income of the properties is being utilised.

Nonetheless there is a volume of evidence to show that the public have been using the temple as a place of worship, not by leave or license of the plaintiffs, but as a matter of right. There is no evidence to support the allegation made in the plaint with regard to the origin and installation of the deities. On the other hand, some attempt was made on the side of the defendant to show that from its very inception the temple was a public one.

So far as the construction of the temple is concerned there is no evidence on either side. The only indication that we can get from Ex. 4 is that Purushottam Bharati had already acquired a hereditary right) of trusteeship by 1856 and that, by then, the deities had also acquired a local reputation. In none of the documents is there anything to show that Purushottam Bharati, or his descendants claimed either the temple or the idols as their family property. If there was to start with, unimpeachable evidence to show that it was a private temple, evidence of its user by the public would not detract from the private character of the trust. In (this case, however the evidence is all one way and that is against the contention of the plaintiffs.

In "LAKSHMANA GOUNDAN v. SUBRAMANIA", AIR 1924 PC 44, the Privy Council held that an inference that a temple had been dedicated to the public could be drawn if the founder held out and represented to the Hindu public that it was a public temple at which all Hindus might worship.

In the case Of "MUNDACHERI KOMAN v. ACHUTHAN NAIR", 61 Ind App 405 (which is a case from Malabar where the "Tarwad" owns private temples unlike in other parts of the Madras Presidency) their Lordships of the Privy Council held that the properties standing in the name of the deities belonged to the temple and that the possession of the "Karnavan" was that of a trustee; and relying on the manner in which the temple endowments had been dealt with and on the evidence as to the public user of the temples, their Lordships upheld the inference drawn by the learned Judges of the High Court that the temples were public. It was held:

Had there been any sufficient reason for holding that these temples and their endowments were originally dedicated for the "tarwad", and so were private trusts, their Lordships would have been slow to hold that the admission of the public in later times, possibly owing to altered conditions would affect the private character of the trusts.

20. Nor would the mere fact that the property had descended from Guru to Chela necessarily deprive the property of its non-secular character. In PARMA NAND v. NIHAL CHAND", 65 Ind App 252, their Lordships found, on the facts of that case, that any user or treatment of the property such as would justify the conclusion that it was a public, and not private trust had not been established. In

"BHAGWAN DIN v. GIR HAR SARUP", 67 Ind App 1 their Lordships found, on the evidence, that the family of the respondents, the descendants of the Dario Gir had treated the temple as its family property, dividing the various items of profit, whether in the shape of offerings or rents, closing it so as to exclude the public from worshipping there when marriage or other ceremonies required the attendance of members of the family at its original home, and erecting "Samadhis" to the honour of its dead. In these circumstances their Lordships held that it was not enough, in order to deprive the family of their private property, to show that Hindus willing to worship have never been turned away or even that the deity had acquired considerable reputation or popularity among the Hindus of the locality. Sir George Rankin delivering the judgment of the Board observed:

The facts and circumstances in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present, and dedication to the public is not to be readily inferred when it is "known" that the temple property was acquired by grant to an individual or family. But where there is no evidence of the origin of the endowment, evidence of how the public have used it may be looked to for determining whether there has been a dedication to the public. Once a long course of user by the public for the purpose of worship is established, it is but fair to infer that the institution was intended to be dedicated for the use of the public.

21. Applying the above principles to the proved facts of this case, I come to the conclusion that the temple in question is an ancient public temple, the origin of which is not known and there is no evidence either of its construction or its dedication. It is also clear that the endowment of item 1 of the plaint schedule properties by the Tapanidhi family was real dedication for the benefit of the idol and was neither illusory nor nominal.

22. The next question that requires to be considered is whether the temple is an "excepted temple" within the meaning of the Orissa Religious Endowments Act 1939 (Orissa Act IV (4) of 1939 as Amended). "Excepted temple" is defined in S. 6 sub-s. (5) of the Act as follows:

Excepted temple means and includes a temple, the right of succession to the office of trustee or the offices of all the trustees (where there are more trustees than one) whereof has been hereditary or the succession to the trusteeship whereof has been specially provided for by the founder.

Section 6, sub-s. (6) defines the expression "hereditary trustee" as

the trustee of a religious endowment succession to whose office devolves by hereditary right or by nomination by the trustee for the time being or is otherwise regulated by usage or is specially provided for by the founder so long as such scheme of succession is in force.

The sale deeds and the certificates of sale filed by the plaintiffs go to show that the properties belonging to the temple were acquired by them as members of a joint family. These stand in the name of (1) Radha Prasad Bhagat father of plaintiffs 5, 7 and 8 and of Kartik Prasad Bhagat whose widow is plaintiff No. 6; (2) Krushna Prasad Bhagat, father of plaintiffs 2 and 3; (3) Ganesh Prasad Bhagat, plaintiff No. 1 and (4) Lakshmi Prasad Bhagat" plaintiff No. 4. Ever since their purchase the plaintiffs have been in management of the temple properties as "marfatdars", and there is no-evidence that any other person ever interfered with their management.

It is also established that prior to their acquisition of the trusteeship the Bharati family had been in management of the trust hereditarily from Guru to "Chela" for over forty years. The fact that the right of Radha Prasad. Bhagat has devolved on his sons is recognised by plaintiff No. 1 and all the descendants of the original purchasers have together filed the suit. The succession to this right of trusteeship has, therefore, devolved by hereditary right and would constitute the plaintiffs as hereditary trustees within the meaning of Orissa Act TV (4) of 1939. The use of the phrase "has been hereditary" in the definition of "excepted temple" would also make no difference and no proof is required to show that the hereditary aright has continued in the same person or family from the very beginning of the endowment.

In C.V. Chelapathi Rao Naidu Vs. The Board of Commissioners for Hindu Religious Endowments, , the phrase "has been hereditary" has been held "to have the same meaning as the expression "is hereditary" and both refer to cases in which succession has, in fact, been devolving hereditarily from the founder. It was also held in that case that the Court should consider the "de facto" exercise of the hereditary right since the days of the original founder and not the presumptive right. It is necessary for the claimants to prove that the temple had, in fact, been founded by their ancestors.

In " Madana Palo and Others Vs. The Hindu Religious Endowments Board, it was held that where the office of trustee has been held by the head of the family for four successive generations and there is no suggestion that the trusteeship had ever been held outside the family the temple should be regarded as an "excepted temple". The absence of a deed importing the hereditary character of the trusteeship would not necessarily negative the claim of the plaintiffs, if it is proved that the tenure has been in uninterrupted enjoyment of the plaintiff's family by descent from father to son, and the hereditary character can in such circumstances be legally "presumed. The sale of a "sebayati" right is void in law but that right can be acquired like any other right by prescription. The plaintiffs entered into [possession under colour of their title deeds, and have (been in possession in their own right for over 40 years. I am, therefore, inclined to hold that the plaintiffs have acquired the right of hereditary trusteeship and that they are "hereditary" trustees within the meaning of the Act. I would, accordingly, hold that the suit temple is an excepted temple and that the order of the

Endowment Commissioner declaring it as such should be upheld.

22. In result, I would hold that the suit temple of Baldev Jieu in Jaginipur is an "excepted temple" within the meaning of the Orissa Hindu Religious Endowments Act of 1939. The judgment of the learned Subordinate Judge declaring the suit temple and the endowments attached to it to be the private "devottar" properties of the plaintiffs is set aside. First Appeal No. 14 of 1947 is accordingly allowed and the plaintiffs' Suit No. 32 of 1944 is dismissed with costs. Title Suit No. 11 of 1945 filed by Balakrishana Kar, praying that the order of the Endowments Commissioner dated 14-3-44 declaring the temple to be an "excepted temple" be set aside, is also dismissed and First Appeal No. 15 of 1947 arising out of this suit is dismissed with costs.

Das, C.J.:

23. I agree.