

(1984) 10 OHC CK 0022

In the Orissa High Court

Case No : Second Appeal No. 66 of 1978

Bipra Charan Choudhury and Another

APPELLANT

Vs

Mahadev Mohanty and Others

RESPONDENT

Date of Decision : 30-10-1984

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 25, 68, 73

Citation : (1985) 59 CLT 6

Hon'ble Judges : J.K. Mohanty, J

Bench : Single Bench

Advocate : R.K. Kar and Mira Das, for the Appellant; Y.S.N. Murty, for the Respondent

Final Decision : Dismissed

Judgement

J.K. Mohanty, J.—Plaintiff-Respondents filed a suit for declaration that the proceedings in O.A. No. 103 of 1970 u/s 68 of the Orissa Hindu Religious Endowment Act (hereinafter called the "Act") before the Assistant Commissioner of Endowment is void and Defendant No. 1 represented by Defendant No. 2, the deity, be restrained from taking possession of the suit lands.

2. The case of the Plaintiffs is that the suit land did not belong to the deity (Defendant No. 2) Radha Govind Jew, but it was the personal property of late Micha Choudhury and his successors and they were in possession all along. Late Raghunath Choudhury (father of Defendant No. 1) and his brother late Gopinath Choudhury sold the suit lands to one Basudeva Sahu by a registered sale deed dated 2-2-1934 (Ext. 1) who in his turn sold the same to Plaintiff No. 2, his mother and, late Kamala Mohanty, the first wife of Plaintiff No. 1 for a consideration of Rs. 123/- by a registered sale deed (Ext. 2) dated 17-2-1937. Thereafter Kamala Mohanty and Plaintiff No. 2 constructed two houses on the suit lands and resided there with family members. On the death of Kamala Mohanty in the year 1939 her two sons Brundaban and Bauri got the suit houses. Brundaban sold his share of the suit houses to his younger brother Baud, who

died in the year 1957 leaving behind his widow Purnabasi and- minor son Padmacharan. As Purnabasi joined Government Service, she left her minor son in the care of Plaintiff No. 1 and his second wife, who remained in possession of the suit houses. The other half of the suit houses (item No. 2 of the schedule to the plaint) remained in possession of Plaintiff No. 2. While the matter stood thus, Defendant No. 1, as the managing trustee of the deity (Defendant No. 2) initiated a proceeding u/s 25 of the Act before the Commissioner of Endowments for recovery of houses in O.P. No. 553 of 1967-68 which ultimately ended in a compromise on 3-4-1970 with a finding that the said proceeding was not maintainable. Thereafter Defendant No. 1 initiated a proceeding u/s 68 of the Act in O.A. No. 108/70 before the Assistant Commissioner of Endowments for recovery of possession of the suit houses after evicting the Plaintiffs therefrom. The Assistant Commissioner of Endowments held that the said petition was maintainable and posted the case for hearing on 30-8-1971, the Plaintiffs were forced to file the suit for the aforesaid reliefs.

3. Defendants 1 and 2 filed a joint written statement whereas Defendant No. 3, the Commissioner of Endowments filed a separate written, statement. All of them took almost a common defence. According to them, the suit lands belonged to Defendant No. 2, the deity and the alienation in favour of Basudeva Sahu on 2-2-1934 was illegal and was without any sanction by the Endowment Board. Moreover it was not for the benefit of the deity. So Basudeva Sahu could not acquire any title under the sale deed. Ext. 1. So he cannot convey any title under Ext. 2, dated 17-2-1937 in favour of Plaintiff No. 2. his mother and late Kamala Mohanty. So the Plaintiffs have no title in the suit lands. The construction of the houses on the suit lands by Kamala Mohanty and Plaintiff No. 2 was denied and it was contended inter alia that the same was purchased by the deity on 26-1-1914 from one Dandasi Jagannath Panthuly for a consideration of Rs. 140/- and the title of the deity was upheld in S.A. No. 1428 of 1924 of the High Court of Madras. In O.P. No. 553 of 1967.68 the Commissioner of Endowments, Orissa passed orders for payment of salami of Rs. 500/- and monthly lent at the rate of Rs. 10/- for the suit houses by the Plaintiffs to the deity for regularising the transaction. But the Plaintiffs did not abide by the order and took no steps for obtaining a permanent lease despite a registered notice dated 16-7-1970 and sent an evasive reply dated 25-7-1970 repudiating the compromise. So Defendant No. 1 was forced to file a petition u/s 68 of the Act before the Assistant Commissioner of Endowments, who held that the petition was maintainable and the said finding of the Asst. Commissioner of Endowments cannot be challenged in a civil court. It has been held in O.P. No. 553 of 1967-68 that the, proceeding u/s 25 of the Act was not maintainable. It has been further contended that the Plaintiffs cannot be said to be the persons claiming the suit lands belonging to the deity in good faith. Besides, the civil court has no jurisdiction u/s 73 of the Act.

4. Before the Munsif, one witness was examined on behalf of the Plaintiffs and one for the Defendants and some documents were filed by both parties. The

learned Munsif, after considering the evidence on record held that the suit lands belonged to the deity (Defendant No. 2), so the alienation by Raghunath Choudhury and Gopinath Choudhury under Ext. 1 to Basudev Sahu was not binding on the deity there being absolutely no evidence that the same was for the benefit of the deity. The proceeding u/s 68 of the Act in O.A. No. 108/70 in the file of the Asst. Commissioner of Endowments was not without jurisdiction. The civil court had jurisdiction to try the suit, the same being maintainable. He, however, did not give any finding as to whether the suit houses were sold by Raghunath Choudhury and Gopinath Choudhury to the Plaintiffs' vendor Basudev Sahu as it was not pressed before him. Ultimately he dismissed the suit. The Plaintiffs filed appeal before the Subordinate Judge, Aska, who allowed the appeal with costs setting aside the judgment and decree of the learned Munsif. The learned Subordinate Judge held that the proceeding in O.A. No. 108/70 before the Assistant Commissioner of Endowments u/s 68 of the Act was not maintainable. Defendant No. 1 was restrained from taking possession of the suit lands and the houses from the Plaintiffs.

5. On behalf of the Appellants it is contended that the Respondents had not obtained any sanction of the Endowment Commissioner. In this case the Respondents purchased the lands from one Basudeva Sahu who was not a trustee or ex-trustee of the deity. Thus the lands became a private property of Basudeva and the deity had no interest at the time of alienation of the same. In that view of the matter it has been held by the appellate court that sanction of the Commissioner of Endowments was not necessary as per the provisions of the Madras Religious Endowments Act. It was further contended by the Appellants that the Respondents had purchased the deity's lands without legal necessity. Against this contention on behalf of the Respondents it was argued that the suit lands were not the lands of the deity, but private lands of Choudhury family. So the question of legal necessity on behalf of the deity did not arise. Even if the contention of the Respondents is not accepted, it is clear from Ext. 1 that the suit lands were sold to the vendor of the Respondents for repairing of the temple of the deity. So even if the lands are proved to be the deity's lands, there is no malafide intention or object in the sale as it was for repairing the temple of the deity.

6. The suit lands were alienated on 2-2-1934 to one Basudeva Sahu who in turn sold the same to the Respondents on 17-2-1937. Thus the deity was not in possession of the lands from 2-2-1934. The present trustee with a view to take back the lands already sold has started the proceedings before the Commissioner of Endowments in 1967-68. So from 1937 till 1967-68 the Respondents were in possession of the suit lands i.e. for a period of more than 30 years. Again, Section 68 of the Act contemplates sale between a trustee or ex-trustee and a vendee, but does not contemplate a sale by a vendor who is neither a trustee or ex-trustee. In the present case the Respondents purchased the suit lands from a vendor who was neither a trustee or ex-trustee. Thus the provision of Section 68 of the Act has no application to the present case. The Respondents are also in

possession of the lands since 1937. Their possession is therefore adverse to the deity. Moreover as the Respondents are claiming title to the suit lands being purchasers from Basudeva Sahu and not through ex-trustee, they could be said to be the persons claiming in good faith. Thus the proceeding u/s 68 of the Act cannot be said to be maintainable. The learned appellate court after considering the facts and circumstances of the case found that the proceeding was not maintainable and in my view rightly so.

7. In the result, therefore, there is no merit in this appeal which is accordingly dismissed.

There shall be no order as to costs.