
(2006) 07 OHC CK 0052

In the Orissa High Court

Case No : Writ Petition (C) No. 15689 of 2005

Bipra Pradhan and Others

APPELLANT

Vs

Smt. Nini Kumari alias Sanjukta Suar

RESPONDENT

Date of Decision : 28-07-2006

Acts Referred:

Citation : (2006) 2 OLR 305

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : Manoj Mishra, P.K. Das and J. Panda, for the Appellant; S.S. Rao, N.C. Nayak and E. Ananta Sayanam, for the Respondent

Judgement

L. Mohapatra, J.—The defendants have filed this writ application challenging the order dated 19.2.2005 passed by the learned Civil Judge (Senior Division), Aska in I.A. No. 5 of 2005 restraining them to go over the suit schedule property to thrash or collect the paddy till disposal of the suit as well as the order of the learned Additional District Judge, Fast Track, Aska dismissing the appeal filed by the defendants.

2. The case of the plaintiff-opposite party is that his father and uncle had got the suit property in the year 1937 by virtue of a Patta issued by the Jamidar of Sanakhemundi. After death of father of the plaintiff-opposite party in the year 1945, plaintiff and his uncle namely, Rama Prasad Sumanta continued in cultivating possession of the suit property. In the last settlement the suit property was recorded jointly in the name of the plaintiff and his uncle in the year 1948. In the year 1985, the said Ram Prasada Sumanta expired and the plaintiff continued in possession of the suit property entirely as the sole owner. In the last Survey and Settlement, the property has already been recorded in the name of the plaintiff and final R.O.R. has been issued in the year 2001 in the name of the plaintiff and the rent is being paid by the plaintiff. The further case of the plaintiff-opposite party is that in the year the suit was filed he had raised paddy crops, harvested the same, collected the crops and stored the same in the

shape of heaps in the thrashing floor by spending huge amount. However, the defendant-petitioners tried to take away the paddy crops by entering into suit property as a result of which the suit had to be filed. In the said suit a prayer for temporary injunction was made vide I.A. No. 5 of 2005 pending disposal of the suit. The defendant-petitioners filed objection in the said interim application and it was the case of the defendant-petitioners that the suit property originally belonged to Jamidar of Sanakhemundi. In or around 1911, the deity Sri Sri Dhabeleswar Mahaprabhu was installed in Nayanagar. After installation of the deity, vast properties were given to the deity and the properties of the deity were under the administrative control of the Jamidar. In or around 1939 the Jamidar appointed Ram Sumanta and Bhagaban Nisanka as trustees to collect Bhag and to utilize the same for the deity. In the year 1955, the wife of the Jamidar executed a relinquishment deed and registered the same in favour of Ram Sebaka Bhusan and the tenants relinquishing her right over Ac.24.56 cents and the said land was to be used for the Rajbhag for the Amruta Mohini of the deity. In the year, 1984 the plaintiff-opposite party had applied to be the hereditary trustee of the deity and the same was objected to by the Assistant Commissioner of Endowments in O.E.A. No. 7 of 1984. According to the defendant-petitioners, if the plaintiff was the owner of the property, there was no necessity on his part to apply for being appointed as hereditary trustee in respect of the suit property. In the year, 2003 the Trust Board was formed appointing Raghunath Deo as the Managing Trustee and it was directed that in the event, the plaintiff-opposite party fails to hand over charge of the institution to the new Board, the Inspector of Endowments shall hand over possession of the properties to Raghunath Deo as per order dated 28.11.2003 under intimation to the petitioners. The petitioners having flouted the order, the Divisional Inspector took over the charge of the temple and its properties and handed over the same to Raghunath Deo, who was the Managing Trustee. The trial Court on the basis of the documents produced before it, held that the properties stood recorded in the name of the plaintiff and he was paying rent. In view of the aforesaid documents, the trial Court further held that possession and prima facie title of the plaintiff-opposite party is proved and accordingly, passed an order restraining the defendant-petitioners from coming over the suit land. The said order was challenged by the defendants in appeal and the appeal was also dismissed on similar grounds.

3. Shri Manoj Mishra, the learned Counsel appearing for the petitioners before this Court challenges both the orders on the ground that there being no dispute that the properties belong to the deity and a Managing Trustee had been appointed to manage the properties of the deity, no order restraining the petitioners should have been passed by the Courts below.

The learned Counsel appearing for the plaintiff-opposite party, on the other hand, submitted that the documents such as R.O.R. and rent receipts clearly support the case of the plaintiff-opposite party as owner of the properties in possession thereof.

4. Undisputedly so far as the disputed properties are concerned, the record of rights stands in the name of the plaintiff-opposite party and the rent receipts indicate that the plaintiff is paying rent for the suit property. The only objection which is material for the purpose of this case is that if the plaintiff was owner of the properties, there was no necessity on his part to file an application before the Assistant Commissioner of Endowments to appoint him as hereditary trustee. It also appears from the objection that a Managing Trustee had been appointed and the Assistant Commissioner of Endowments directed the plaintiff-opposite party to hand over possession of the suit property to the said Managing Trustee. On one hand, record of rights stands in the name of the plaintiff-opposite party and the rent receipts support his case and on the other hand, in respect of the suit property, a Managing Trustee had been appointed to look after the properties of the deity, which covers the suit property also. Under the circumstances, it is difficult to say as to who has better prima facie case so far as title and possession are concerned. I am, therefore of the view to safeguard the interest of both the parties, a receiver should be appointed in respect of the suit property so that the accounts can be submitted before the trial Court and depending on the ultimate result of the suit, the successful party can be compensated.

5. I therefore direct that the trial Court shall put the suit property to auction where the parties to the suit can only participate and the highest bidder shall be appointed as the receiver of the suit property for that year. The bid amount shall be deposited in the trial Court and the trial Court shall keep the said amount in fixed deposit every year. The bid should be conducted at least a month prior to agricultural seasons that the receiver will get enough time to deposit the amount and also make necessary arrangement for cultivation. This arrangement shall continue till disposal of the suit. Depending on the result of the suit, the trial Court shall pass necessary orders while disposing of the suit.

The Writ application is accordingly disposed of.