

(1999) 01 OHC CK 0024
In the Orissa High Court
Case No : Second Appeal No. 228 of 1993

Brundaban Samartha and Others

APPELLANT

Vs

Shiba Samartha and Others

RESPONDENT

Date of Decision : 29-01-1999

Acts Referred:

Orissa Hindu Religious Endowments Act, 1969 — Section 41

Citation : AIR 1999 Ori 185 : (1999) 88 CLT 87

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : B.H. Mohanty, P.K. Nayak, B. Das and D.P. Mohanty, for the Appellant; I.C. Dash, J. Patnaik, S.K. Parida, P.K. Mohanty, A.R. Dash, N. Lenka, N. Das, P.K. Mohapatra, S.K. Mohanty and D.K. Nayak, for the Respondent

Judgement

P.K. Mishra , J.—Plaintiffs have filed this second appeal challenging the dismissal of their suit for a permanent, injunction restraining defendants 1 and 2 from selling Ghee Dipa or Maha Dipa or any other substitutes in the temple premises of Lord Lingaraj. In the suit, the Executive Officer of Lord Lingaraj Temple, has been arrayed as proforma defendants No. 3, but no relief is claimed against defendant No. 3. Both the Courts below have negated the claim of the plaintiffs. During the pendency of the Second Appeal, a compromise petition has been filed which has been signed by plaintiff-appellants and defendant No. 2-respondent No. 2.

2. The plaintiffs claim that they are doing "Samartha Seva" for five days a month after death of their father Banchhanidhi Samartha. It is further claimed that Bula Samartha and Raghu Das were also rendering "Samartha Seva" in the temple of Lord Lingaraj, but after they died issueless, the Board of Trustees of Lord Lingaraj assigned their duties to Banchhanidhi Samartha who was given the exclusive right to sell Ghee Dipa in the temple premises on payment of Salami of Rs. 120/- per year as per the resolution passed by the Board. It is further claimed that after death of Banchhanidhi Samartha, the plaintiffs are rendering

"Samartha Seva." including the services offered by Bula Samartha and Raghu Das and they have the exclusive right to offer Ghee Dipa. It was further pleaded that the predecessor-in-interest of the plaintiffs had filed O.S. No. 4/103 of 1972/1970-1 which was decided in favour of Banchhanidhi Samartha.

3. Defendants 1 and 2 in their joint written statement denied about the rights claimed by the plaintiffs. It was claimed by them that the decision in the previous suit was not binding of them, as they were not parties. It was claimed that all the four branches of Samartha family perform Mahadip Seva in the temple of Lord Lingaraj and those persons are allowed to sell Ghee Dipa, flowers and other materials in the temple premises. The previous dispute had been resolved in the year 1949.

Defendant No. 3 challenged the right of the plaintiffs on the ground that no hereditary right had been conferred on the plaintiffs to sell Ghee Dipa.

4. On the aforesaid pleadings, several issues had been framed and both the Courts below have negated the claims of the appellants. The lower appellate Court also found that in view of the provisions contained in Section 41 of the Orissa Hindu Religious Endowments Act (hereinafter referred to as the "Act") the suit in the Civil Court was not maintainable.

5. In the present case, the appeal cannot be disposed of in terms of the compromise as respondent No. 1 and respondent No. 3 have not signed the said compromise. The lower appellate Court has found that the suit is not maintainable in view of the provisions contained in Section 41(1)(e) of the Act. Keeping in view the nature of the right claimed and the dispute raised, the finding of the lower appellate Court to the effect that Civil Court does not have jurisdiction in the matter and the dispute comes within the purview of Section 41 of the Act appears to be correct. Even though the plaintiffs have filed the suit for injunction, the relief claimed in the suit can be granted only on the basis of determination relating to the right claimed by the plaintiffs which, essentially comes within the purview of Section 41 of the Act. As such, the suit is liable to be dismissed on the ground of maintainability.

6. Since the suit is found to be not maintainable the other findings recorded by the trial Court as well as the lower appellate Court are to be set aside. If the dispute along with parties still continues, it would be open to the parties to file appropriate proceeding under the Act. Since the suit itself is found to be not maintainable and the findings have been vacated, such findings recorded by the trial Court as well as the lower appellate Court in the present suit and the appeal will not operate as res judicata. The question relating to binding effect of the compromise between the appellants and respondent No. 2 filed in the present appeal can also be agitated before the appropriate authority under the Act in case any such proceeding is initiated.

7. Subject to the aforesaid observations, the Second Appeal is disposed of. There will be no order as to costs.