
(1983) 12 OHC CK 0009

In the Orissa High Court

Case No : Miscellaneous Appeal No. 180 of 1982

Dayanidhi Naik

APPELLANT

Vs

Mangala Thakurani and Another

RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 41

Citation : (1984) 1 OLR 186

Hon'ble Judges : R.C. Patnaik, J

Bench : Single Bench

Advocate : S. Misra-2 and B. Das, for the Appellant; Devananda Misra, Dipak Misra, L. Sukla, R.N. Naik, Anil Deo and S.S. Hota (for R. 1) and A.S. Naidu, (for R. 2), for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—This is a second appeal from a decision of the Deputy Commissioner of Endowments reversing the decision of the Assistant Commissioner and allowing an application filed by respondent No. 1 u/s 41 of the Orissa Hindu Religious Endowments Act, 1951 for a declaration that the property-7.32 acres in extent was the specific endowment of the deity Mangala Thakurani of Kakatpur.

2. Respondent No. 1 alleged that according to prevailing custom pipe was blown at the time "Naibedya" was referred. The property belonged to Mohant Sri Raghu Nandan Ramanuj Das of Emar Math. He endowed the property as Jagir for Debadasisseba and blowing of Kahali (Pipe). One harlot family was in enjoyment of the property as Jagir and rendering the, service. In 1928 the then Mahant quit the rent. At that time one Ani Bai was rendering the seba. She was issue-less and had lost her spouse. She adopted the appellant as her son and made a gift of the property in favour of the appellant by two registered deeds of gift, one in 1928 and the other in 1942. It is alleged that by the aforesaid gift, the appellant became the Jagirholder and went on rendering Kahaliseba till 13.4.1979 when he

abstained from rendering the service. The management was, therefore, obliged to get the specific seba puja done by spending Rs. 10/- a day. Their application u/s 21 of the Orissa Hindu Religious Endowments Act, 1951 (for short, "the Act") was allowed and the appellant was called upon to pay Rs. 3,600/- to the management. There upon the appellant filed original suit No. 97 of 1980 before the subordinate Judge, Puri for the nullification of the order passed u/s 21 of the Act. Respondent No. 1, therefore, filed an application u/s 41 of the Act for a declaration as stated above.

3. The appellant controverted the allegations stating that before the provincial settlement in 1897, the land was subject to an illegal grant (Jagir). So, it was resumed and in the final record of rights published on 12.9.1897, Banchhanidhi Naik and Raghu Naik, the brothers of the appellant, were recorded as Bajayapti Stitiban raiyats, as regards the five acres under plot No. 195 and khata No. 152 and as Sthani stitiban raiyats in respect of 2.60 acres in plot No. 196 under Khata No. 154|2. In the 1912 record of; rights the land was recorded with the same note in the name of the mother of the appellant. In 1928, the description of the status of the tenant continued but the land was made rent free and in lieu there of his mother was obliged to blow pipe before the deity. It was asserted that the donee's obligation was to blow pipe in lieu of the rent which had been quit and in case of default she was liable to pay rent but was not evictable for non performance of the service. He further asserted that upon vesting of the estate the land was assessed to rent by the State Government and he paid rent. Despite payment of rent by him, he continued to perform the service as a mark of his devotion to the deity and not under any legal obligation. He further alleged that in the consolidation proceeding which was on, he was recorded as a raiyat. He asserted that the order u/s 21 of the Act was a nullity and void.

4. Original suit No. 97 of 1980 filed by the appellant was decreed exparte but the decree was set aside and has been stayed by an order of this court dated 19.4.1983. The proceeding under the Orissa Consolidation of Holdings and prevention of Fragmentation of land Act, 1972 pending in appeal No. 13 of 1980 before the Deputy Director of Consolidation, Range-III has also been stayed.

5. Upon a consideration of the materials placed by the parties the Assistant Commissioner dismissed the application holding that Anil Bai was not a Jagir holder and had acquired raiyati status. He further found that the property in question was not a specific endowment. He negatived the case of the respondent No. 1 that under Exts. 1 and 2 Ani Bai created a specific endowment. Lastly he held that in view of the assessment of rent and payment of rent by the appellant to the State, he is no more bound to render Kahaliseba in the temple of "Sri Mangaia Thakurani."

The appellate court held that the property was not granted by way of Jagir and the Mahant had not dedicated the property for rendering of the service. It further held that the gift by Anil Bai created a charge on the property even if no such charge was existing prior thereto. The appellant was therefore, not entitled to

avoid the charge.

6. The learned counsel for the appellant has argued that the documents indicated that the predecessors-in-interest of the appellant were raiyats with occupancy right and there was initial liability to pay rent. Rent was exempted in consideration of the raiyat blowing pipe before the deity. Failure to render the service would render the raiyat liable to pay rent. The land was not Debutter and in the facts and circumstances, the appellant could not be obliged to render service. He has further submitted that in view of the settlement of the land after vesting with the appellant and fixation of rent and payment of rent by him, the appellant was exonerated from rendering service.

7. It has not been argued that there was creation of endowment by dedication in favour of the deity before 1928. The appellate court found for the respondent No. 1 on the ground that under the deeds of gift (Exts. 1 and 2) a specific endowment was created by Ani Bai and the appellant was liable to render service; the endowment was a charge on the property.

8. Ext. C, the record of rights of the 1928 settlement goes to show that Ani Bai was an occupancy sthitiban raiyat but was to render the service of Kahaliseba in lieu of payment of rent. The appellate court was, therefore, right in holding that there was no endowment of the property until 1928. He relied upon Exts. 1 and 2 to find specific endowment. The relevant portions from the deeds of gift which are in identical terms are that Ani Bai was in peaceful possession and enjoyment of the property and was rendering Kahaliseba. As she was ailing continually, there was difficulty in the rendering of service. So, the service was being rendered through the appellant who had been brought up by her as her son and was looking after her. The donee would possess and enjoy the property and also get his name mutated. He should look after her and render Kahaliseba before the deity.

9. The recitals go to indicate that she imposed the self same obligation which she was under on the date of gift. The appellant's obligation was under the deeds of gift the same as hers. No additional, obligation was created. The gift was a token of her love and affection for the donee, but as she was obliged to render service in view of the exemption of rent, the said condition was also incorporated.

The learned counsel for the parties referred me to some authorities. In *M. Radhakrishna Gade Rao Sahib Vs. State of Madras*, the Supreme court was considering the case of a specific endowment, where in a deed of settlement, it was provided that the properties set out in schedule "A" thereunder would be responsible for meeting the expenses of charities specified in schedule "B" and the total amount of the expenses was mentioned and made a charge upon the Schedule "A" properties, such a charge was considered by the Supreme Court to be a specific endowment, it was observed :

"In order that there may be a specific endowment, the settler must divest himself of the property endowed. To create an endowment he must give it and if

he has given it, he of course has not retained it, he has then divested himself of it."

In *Hindu Religious Endowments, Madras v. Thadikonda Kotestvara Rao* A. I. R. 1937 Mad 852 it was held :

"where specified charitable payments exhaust the income of the property at the date of the gift, it has been held in several cases that the intention is to devote the whole to charity, but where they do not so exhaust the income, the charitable trust has been limited to the specific payments and subject to that the donees have been held to take beneficially...if the property or the whole of the income arising from it is given to charity, any subsequent increase in the value of the property accrues to the charity..."

According to *Byreddi Narasi Reddi Vs. Thamballa Balamma*, , grants in favour of idols of religious endowments are of four categories :

- (a) a complete dedication in and by which the entire beneficial interest in the property is conveyed to the idol of religious institution;
- (b) a dedication to the idol or religious institution subject to a charge as to part of the income in favour of private person;
- (c) a gift only with reference to a part of the income in favour of the idol or religious establishment, and the disposal of the surplus for purpose unconnected with the trust and
- (d) a grant of property to a private person subject to a charge in favour of the idol or the religious establishment in respect of a portion of the income for purposes of service.

In *P.V. Bheemsena Rao Vs. Sirigiri Pedda Yella Reddi and Others*, , the Supreme Court observed as follows :-

""...The distinction between a grant for an office to be remunerated by the use of land and a grant of land burdened with service is well known in Hindu law. The former is a case of a service grant and it resumable when its service is not performed. The latter is not a service grant as such but a grant in favour of a person though burdened with service and its resumption will depend upon whether the circumstances in which the grant was made establish a condition that it was resumable if the service was not performed..."

Learned counsel for the respondent strongly relied on a decision of this court in *Balaram Rai and Others Vs. Mt. Ichha Patrani and Others*, , especially on the following observations :

"....Where a property can be held revenue free only so long as the duties in the temple are regularly performed, the grant is one burdened with service and is a Debutter grant. The fact that proprietary rights are vested on a grantee is not inconsistent with the charge of a trust in favour of a deity..."

The case related to a village. Where a village was revenue-free, it meant that the entire income was appropriated by the grantee. The entire income was to be appropriated so long as the duties in the temple were regularly performed. There could not be any dispute that the property was Debutter grant. These decisions cited, therefore, are not very helpful.

10. Coming to the facts of the case, the predecessors. in-interest of Ani Bai were stitiban tenants. So, there was no obligation to render service in consideration of enjoyment of the income from the property but there was obligation to pay rent. Payment of rent was exempted by the landlord, in lieu there of the tenant was to render service to the deity for his benefit. Failure to render service would revive the tenant's liability to pay rent and the landlord's right to receive rent. The rights in the land were in no way affected. Such was the liability when Ani Bai made the gift in favour of her son. The liability which she was under transmitted to the appellant under the deeds of gift. Under Exts. I and 2 Ani Bai did not create a specific endowment. The position, therefore, was that the appellant was obliged to render service and continue to enjoy the land" rent free. If he failed to render service, he incurred the liability of paying rent.

11. From Ext. E series it can appropriately be inferred that the property has vested in the Government and raiyati rights have been recognised and the land has been assessed to cash rent. No doubt some of the receipts bear the endorsement "without prejudice". The legal effect of such endorsement is that acceptance of rent would not affect the title of the landlord prejudicially or stop him from setting tip a case incompatible with acceptance of rent. But as regards third-party, the receipts have evidentiary value.

12. I am of the view that upon assessment of rent and payment there of by the raiyat his obligation to render service did not longer subsist. His obligation was to render service in lieu of rent. Liability to pay rent having revived, the liability to render service vanished. The judgment of the Appellate Court is, therefore, not sustainable and is set aside.

13. In the result, the appeal is allowed. In the circumstances, there would be no order as to costs.