

(1960) 03 OHC CK 0006
In the Orissa High Court
Case No : M.A. No 25 of 1957

Dhruba Charan Swain and Others

APPELLANT

Vs

Jagannath Panda and Another

RESPONDENT

Date of Decision : 30-03-1960

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 3
Orissa Tenancy Act, 1913 — Section 130

Citation : (1960) 26 CLT 293

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : M. Rao and M.K.C. Rao, for the Appellant; L.K Dasgupta and G.N. Sengupta, for the Respondent

Final Decision : Dismissed

Judgement

Misra, J.—The Respondents, as Applicants, filed a petition for declaration that the deity Sri Bhubaneswar Mahadeb located at Kanpur was their private deity. After necessary enquiry, the Assistant Endowment Commissioner held that the institution of the deity was a public institution which has no hereditary trustees; and that the Respondents were more sebak marfatdars, that is, the managers for the time being of the institution. On appeal, the Endowment Commissioner held that the institution was a public temple, but the Respondents were hereditary trustees thereof. Against the finding of the Endowment Commissioner that the Respondents are hereditary trustees, the Appellants, who were opposite parties to the petition, have Come up in appeal.

2. The Respondents has conceded before the Endowment Commissioner that the institution of the deity was a public temple and the finding of the Endowment Commissioner on the score has not been sought to be agitated here. The only point for consideration in this appeal is whether the Respondents are hereditary trustees.

3. u/s 3(vi) of the Orissa Hindu Religious Endowments Act, 1951, "hereditary

trustee" means the trustee of a religious institution succession to whose office devolves by hereditary right since the time of the founder or is regulated by custom or is specifically provided for by the founder, so long as such scheme of succession is in force. In the present case, there is no question of custom and nothing is known as to when the institution was founded and who founded it. So, the Respondents can be hereditary trustees if they come under the first clause of the definition that is if they have acted as trustees, under hereditary right throughout. Since the time of the founder is unknown, the test shall be as to whether the predecessors of the Respondents had been acting as such trustees throughout from time immemorial. Ext. 4 is a Robkari of the year 1841 relating to the grant of some land by the Government to one Nidhi Panda, admittedly an ancestor of the Respondents, in his capacity as the marfatdar of the disputed deity. Ext. 4(a) is a Robkari of the same year granted in favour of Arta, the son of Nidhi, as the marfatdar of the deity, on the death of Nidhi As will appear from the evidence of A.P.W. 2, who gives the genealogy of the Respondents, Nidhi's son was Arta whose two sons were Bidyadhar and Narayan. Narayan's son was Rama. Bidyadhar's son was Gobinda and Gobindia's son was Daitari. Some of the present Respondents are the sons of Daitari. As will appear from Ext. 3 series, Kujang estate khatian, Rama has been shown as the marfatdar of the deity in respect of some of the lands, and Bidyadhar has been shown as the marfatdar in respect of some other lands. Ext. 2 is the revisional settlement khatian in which Bidyadhar has been shown as the marfatdar. Ext 1 series are the current settlement khatians in which Rama and sons" of Gobinda have been shown as the marfatdars of the disputed deity. Ext. A filed by Appellants, shows that in 1951 some of the Respondents, as the marfatdars of the deity brought a suit challenging certain alienation made by some widow of the deity's property Ext. B relates to a proceeding u/s 130 of the Orissa "Tenancy Act, to which the Zamindar of Kujang and some of the ancestors of the Respondents were opposite parties in respect of some of the lands (not the land covered by Ext. 1(d) of the deity, and in the said proceeding, while the zamindar of kujang was directed to be recognised as sebaiddar, the ancestors of the Respondents were directed to be recognised as marfatdars. Relying on Ext. B, an argument had been advanced before the Endowment Commissioner, which has been repeated here, that the Zamindar of Kujang was the trustee and not the Respondents. Rightly, the Endowment Commissioner observed, an entry in a settlement Khatian does not create any Status or right Apart from that, according to the dictionary meaning, a "marfatdar" is a trustee of any trust property, whereas a "sebait" is a person performing the worship or the service of a deity. So, the said Ext. B does not indicate that the trusteeship of the Respondents, if any, had been taken away by the said order. Ordinarily, trustee is known as the sebait marfatdar; by splitting up the two functions calling one as sebaiddar and the other as marfatdar-Ext. B rather created an ambiguity than resolving any difficulty and it cannot be said that by Ext. B, the alleged trusteeship of the Respondents was denied. If the Zamindar of Kujang did act as trustee for any period, papers could have been produced from the estate office to indicate that way. On the contrary, by their

own records Ext. 3 series, the estate authorities had admitted that the trusteeship of the deity, at the time of the said records, remained with the ancestors of the Respondents So, Ext. B cannot be relied upon to support the Appellants' contention that the Zamindar of Kujang exercised the trusteeship at any time in respect of the disputed deity. All that we get from the aforesaid documents is that since 1841 up to 1951 the Respondents have acted as trustees of the deity for the last six generations, covering a period for about 110 years.

4. Mr. Rao for the Appellant sought to rely on *Appasami v. Nagappa* ILR Mad. 500 to urge that mere succession of a son to a father in the trusteeship of a temple does not create a hereditary right. But the case so relied upon is not one dealing with the case of a trusteeship for several generations. On the other hand Mr. Dasgupta has relied upon *Madana Palo and Others Vs. The Hindu Religious Endowments Board*, where it has been held that where the office of a trustee has been held by the head of a family for four successive generations and there is no suggestion that the trusteeship had ever been held outside the family, the trusteeship would be regarded as hereditary. Their Lordships relied on *Rasdas v. Hammantha Rao* ILR Mad. 364 which related to temple lands and in which a question was raised whether the trusteeship was hereditary in the family of the Plaintiff. On a finding that the members of a family had held the office of trustee continuously for over 100 years and there was no evidence that it was ever held by any other family it was held in *Rasdas v. Hammantha Rao* ILR Mad. 364 that was sufficient to prove the hereditary right which had been set up. *Madana Palo. Hindu Religious Endowments Board Madras Madana Palo and Others Vs. The Hindu Religious Endowments Board*, further relied on *Baboo Gopal Lala v. Teluck Chunder Rai* M.I.A. 183 where their Lordships of the Privy Council held that the absence in the deed of words importing the hereditary character of the tenure was supplied by evidence of long and uninterrupted enjoyment and by the descent of the tenure from father to the son, and that from this hereditary character could be legally presumed. No doubt, in the Madras Hindu Religious and Charitable Endowments Act, the definition of a hereditary trustee is not as stringent as it is in the Orissa Act, inasmuch as in the former it means the trustee of a religious institution succession to whose office devolves by hereditary right whereas in the corresponding provision in the Orissa Act, the expression since the time of the founder has been added thereto. But when a founder is unknown and the time of the founder is not known and there is no deed regarding the foundation, one has to rely upon the theory of lost grant and has to presume that the system, as is obtaining from the time immemorial, was the system that has been continuing from the time of the founder. As a matter of fact, in the present case, it was not the case of the Appellant that there was no hereditary trusteeship in respect of the institution; but what had been contended by them before the Assistant Endowment Commissioner was that the Respondents were mere sebaks and that the hereditary trusteeship vested in the Zamindar of Kujang, So, the fact that the institution was under a hereditary trusteeship was more or less admitted and the contest was that the Respondents

were not hereditary trustees. In that perspective, when the Respondents have been trustees for six generations, the inference is irresistible that it is they who are the hereditary trustees of the temple.

5. Mr. Rao, sought to raise another contention to the effect that what the Respondents had claimed was not their hereditary trusteeship, but that the deity was their private deity, and from that perspective when the temple was found to be a public temple, they could not claim any right of hereditary trusteeship. When the Respondents claimed the temple to be a private temple, claiming hereditary ownership over the deity was inherent there, and that included their claim of hereditary trusteeship in case the temple was a public one.

6. In the result, I find no merit in the present appeal which is accordingly dismissed with costs. Appeal dismissed.