

(1970) 02 OHC CK 0021
In the Orissa High Court
Case No : Second Appeal No. 2 of 1966

Gadadhar Mohapatra and Another

APPELLANT

Vs

Puna Bewa and Others

RESPONDENT

Date of Decision : 18-02-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Orissa Hindu Religious Endowments Act, 1951 — Section 41(1), 73

Citation : AIR 1971 Ori 154

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : M. Mohanty, for the Appellant; A.B. Misra, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Defendants 1 and 2 are the appellants against a confirming judgment of the learned Subordinate Judge, Bhubaneswar, in a suit for ejectment of defendants 1 and 2 from the disputed property.

2. Defendant No. 3 deity is the admitted owner of the suit land which is 6 decimals in extent and appertains to plot No. 1505. The father-in-law of plaintiff No. 1 was possessing the said land as a Svak of defendant No. 3 and upon his death plaintiff No. 1's husband enjoyed it in lieu of seba-puja, and after his death about 6 years prior to the suit plaintiff No. 1 came to manage the seba-puja. The actual seba was being done through her son-in-law plaintiff No. 2 and they were in possession of the property. In the year 1959 defendants 1 and 2 who are father and son encroached upon half a decimal out of the disputed land by constructing a cowshed and in course of time they encroached over a further area of 2i decimals. That gave rise to the suit.

3. Defendants 1 and 2 contended that the plaintiffs have no locus standi to maintain the suit; plaintiff No. 1's husband and defendant No. 1's adoptive father Dema Mohapatra had 8 acres and 5 annas 4 pies interest respectively in

the holding. Later on their interest was combined and it was divided half and half. Accordingly defendants 1 and 2 are in possession of 3 decimals of land representing the half interest in the holding.

4. Defendant 3 the deity in a separate written statement contended that plaintiff No. 1 has no locus standi to file the suit and the civil court has no jurisdiction.

5. The trial court held that the civil court had jurisdiction; the defendants had failed to prove partition in the manner alleged; and that defendants 1 and 2 were encroachers in respect of 3 decimals of lands. Accordingly the suit was decreed. The lower appellate court affirmed the decree of the trial court.

6. It is not disputed that Dama and Arta were two brothers and Arta's son was Banchhanidhi whose widow is plaintiff No. 1. Dama's son is Gadadhar and Gadadhar's son is Jaykrishna. both of whom are defendants 1 and 2 respectively.

7. Mr. M. Mohanty, learned counsel for the appellants, presses only two contentions, namely, that the plaintiffs have no locus standi to maintain the present suit and that the civil court had no jurisdiction to entertain the dispute in question. Even according to the defence case Banchhanidhi had half interest in the holding. It has now been decided upon very good authority that women are entitled to offer seba puja and manage the performance of religious rites. In the circumstances it is difficult to see any justification in the contention that plaintiff No. 1 has no locus standi to bring the present action.

8. The second question is rather seriously pressed. Provision is made in Section 73 of the Orissa Act 2 of 1952 regarding bar of jurisdiction of civil courts in respect of certain matters. The provision of that section may be extracted:--

"Bar of suits in respect of administration of religious institution--

(1) No suit or other legal proceeding in respect of the administration of a religious institution or in respect of any other matter or dispute for determining or deciding which provision is made in this Act shall be instituted in any Court of Law, except under, and in conformity with, the provisions of this Act.

(2) Nothing contained in this section shall affect the right of the trustee appointed under the Act of a religious institution to institute a suit to enforce the pecuniary or property rights of the institution or the rights of such institution as a beneficiary."

It is contended by Mr. Mohanty that provision has been made for the present dispute in Section 41(1) (e) of the Hindu Religious Endowments Act. That section reads thus:--

"41. (1) In case of a dispute the Assistant Commissioner shall have power to enquire into and decide the following disputes and matters--

X X X X (e) whether any person is entitled by custom or otherwise, to any honour, emolument or perquisite in any religious institution and what the

established usage of religious institution is in regard to any other matter."

It is contended that the dispute in the present case is in relation to "emolument" in a religious institution and as such the matter being within the special jurisdiction of the Assistant Commissioner u/s 41(1) (e) of the Act. the bar u/s 73 of that Act is operative and the jurisdiction of the civil court must be taken to be barred. It is further contended by Mr. Mohanty that the courts below went wrong in overlooking the pleadings of defendants 1 and 2 wherein they had specifically raised the dispute that they were co-sharer sevaks and not strangers and trespassers. The courts below have erroneously taken the view that defendants 1 and 2 are the trespassers and have overlooked the fact that they were actually claiming as co-sharer sevaks. Along side it is also contended that as to who the sevak should be is a matter for the deity and its manager to decide and it is not open to the civil court to enter into such a dispute and determine the matter.

9. Coming to the last submission first I cannot agree with Mr. Mohanty's contention. I do not think it is open to dispute that sebayati right is virtually a civil right and cognizable by the civil court unless its jurisdiction is clearly or impliedly barred. It cannot be a matter for defendant No. 3, the deity, to finally decide.

10. The scope of Section 41(1) (e) of the Hindu Religious Endowments Act, according to me, cannot cover the present dispute. It has been laid down upon good authority that it is the stand taken in the plaint that really would decide the maintainability of an action. In the present case it has been clearly stated that defendants 1 and 2 were trespassers having no right or interest in the property. The contention raised by defendants 1 and 2 that they had a share has been clearly negated as the courts have found that defendants 1 and 2 had failed to prove the partition as alleged, and have determined their character to be that of encroachers. Therefore, taking either view it must be held that it was not a case where a dispute squarely within the purview of Section 41(1) (e) of Orissa Act 2 of 1952 was raised for determination. On the aforesaid analysis the conclusion must follow that the civil court has jurisdiction.

11. Since no other question has been raised, on my aforesaid finding that Second Appeal is bound to fail. It is, therefore, dismissed. But there would be no order as to costs.