

(1982) 08 OHC CK 0015
In the Orissa High Court
Case No : Second Appeal No. 134 of 1977

Hadu Mohapatra and Others

APPELLANT

Vs

Radha Bewa

RESPONDENT

Date of Decision : 03-08-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 9
Criminal Procedure Code, 1973 (CrPC) — Section 145
Orissa Hindu Religious Endowments Act, 1951 — Section 73

Citation : AIR 1983 Ori 4 : (1982) 54 CLT 305

Hon'ble Judges : P.K. Mohanty, Acting C.J.

Bench : Single Bench

Advocate : P.N. Mohapatra, for the Appellant; P.K. Misra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, Actg. C.J.

1. The Second Appeal is by the defendants against a decree of affirmance. The suit was for a declaration that the plaintiff-respondent is the shebayat of the deity Ramachandi Thakurani installed at village Muktapur and for a permanent injunction restraining the defendants appellants from interfering with the plaintiff's possession over the plaint schedule lands measuring 2.02 acres.

2. The plaintiff's case was that one Krushna Mohapatra of village Nabaghanapur was the shebayat of the deity and was recorded as such in the settlement record of rights finally published in the year 1931. After his death, the shebayati right devolved on his son Hata Mohapatra who performed the sevapuja of the deity till he become old and infirm. As he had no son he made an oral gift of shebayati right in favour of his sister's son Purnanada Mohapatra who was one in the line of succession. He constructed a house for Purnananda at village Muktapur and entrusted the sevapuja of the deity to him. Purnananda remained in possession of the deity's property since 1947. He died unmarried in 1966. On his death, the plaintiff being his mother became the sole heir and successor to shebayati right.

She appointed her nephews Bharat Mohapatra (PW 3) and Sudam Mohapatra (PW 1) and her brother-in-law Dama Mohapatra to perform the sevapuja of the deity successively till her marriage with PW 6 Arakhita Mohapatra in 1967. After marriage, she got the sevapuja of the deity performed by her husband till the date of suit. The plaintiff has been all along in possession of the property of the deity through her husband PW 6. In 1970 the defendants who are villagers of Muktapur demanded Rs. 40/- from the plaintiff towards the cost of an annual feast which was held in the temple of the deity on Chaitra Purnima day. As the plaintiff did not accede to the demand, the defendants started creating disturbance in her possession over the suit lands. When the defendants threatened to cut away the standing crops from the suit land in 1970-71, PW 6 Arakhita Mohapatra, the husband of the plaintiff instituted a proceeding u/s 145. Cr. P. C. against them. The proceeding terminated in favour of the defendants on 10-2-1972. Then the plaintiff filed the suit for the aforesaid reliefs.

3. The case for the defendants was that after the death of Krushna Mohapatra, his adopted son Hata Mohapatra performed the sevapuja of the deity till his death. Thereafter there was none to perform the sevapura of the deity for some time. Hence the villagers brought Purnananda Mohapatra from his native place at Sankhei in the year 1952 or 1953 when he was aged about twelve years. Purnananda continued to perform the sevapuja of the deity till his death. But he was never in possession of the deity's property. The allegation that the plaintiff got the sevapuja of the deity performed through Bharat Mohapatra, Sudam Mohapatra and Dama Mohapatra was denied. The plaintiff's marriage with PW 6 Arakhita Mohapatra was also denied. It was contended that the plaintiff was neither the shebayat of the deity nor she was in possession of the deity's property at any time. It was alleged that the villagers of Muktapur have all along been in possession of the suit land and they have been meeting the expenses of the sevapuja out of the usufructs of the deity's lands. After the death of Purnanada Mohapatra. the villagers engaged defendant No. 5 Khali Dalabehera as a sebasia and he has been performing the sevapuja of the deity.

4. Both the courts below concurrently held that Krushna Mohapatra and after his death his son Hata Mohapatra were sebasis of the temple and were enjoying the suit lands in lieu of service rendered to the deity. It was also held that Purnanada, the sister's son of Hata Mohapatra was sebasia of the temple from 1947 till his death in the year 1966. Thereafter the plaintiff got the sevapuja performed through P. Ws. 1 and 3 till she married PW 6 in the year 1967; that P. W. 6 was performing the sevapuja and was cultivating the deity's lands on behalf of the plaintiff; that the plaintiff never discontinued the sevapuja of the deity and that DW 3 was never engaged as sebasia of the deity. It was further held that the plaintiff was in possession of the suit lands till the date of attachment in the proceeding u/s 145. Cr. P. C. Upon such finding the plaintiff was declared to be the shebayat of the deity and the defendants were permanently restrained from inter-ferine with her possession over the deity's lands. The aforesaid findings are based on appreciation of evidence, both oral and documentary, and cannot be

assailed in second appeal.

5. The substantial question of law raised at the time of admission of the appeal is whether the suit is hit by Section 73 of the Orissa Hindu Religious Endowments Act, 1951. Section 73 of the Act reads as follows :

"73. 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."

The first part of the Section deals with suits or legal proceedings in respect of administration of a religious institution and prohibits the institution of such suits or proceedings except under and in conformity with the provisions of the Act dealing with such administration. The second part prohibits institution of suits in a court of law in respect of any other matter or dispute for determining or deciding which provision has been made in the Act.

6. The present suit is one for declaration of plaintiff's shebayati right and for a permanent injunction restraining the defendants from interfering with her possession over the deity's properties. The plaintiff does not claim right of trusteeship of the deity. The plaint proceeds on the footing that the plaintiff as the mother of Purnanada is the successor to the shebayati right. It is the case of both parties that for a very long time sevapuja of the deity was being performed by the members of the plaintiff's family. The appellate court found that Krushna, Hata. Purnanada and the plaintiff were performing the sevapuja of the deity as sehasis in succession and that they were possessing the suit lands in lieu of their services rendered to the deity. It is now well settled that religious offices can be hereditary and that the right to such an office is in the nature of property devolution of which is governed, in the absence of any direction to the contrary given by the founder, by the ordinary rule of succession under the Hindu Law. On the view that shebayatship is property, their Lordships of the Supreme Court have recognised the right of a female to the religious office of shebayatship in the case of Angurbala Mullick Vs. Debabrata Mullick, . In a subsequent decision in the case of Raj Kali Kuer Vs. Ram Rattan Pandey, their Lordships also held that the right of a hereditary priest or a pujari in a temple must also amount to property where emoluments are attached to such an office.

7. A suit by a shebayat against the villagers who prevented him from performing sevapuja of the deity and possessing the deity's properties is not prohibited under the Act. There is no provision in the Act for determining or deciding a

dispute of the present nature. Section 73 can only apply to disputes or matters for which provision has been made in the Act. It does not bar suits under the general law which do not fall within the scope of any of the provisions of the Act. In my opinion, the present suit is not one in respect of the administration or management of the temple and there is also no provision in the Act for determining or deciding a dispute of the present nature.

Therefore, it is not hit by Section 73 of the Act.

8. In the premises aforesaid. I dismiss the appeal and maintain the decree passed by the court below. The appellants shall pay the costs of this appeal to the respondent.