

(1975) 08 OHC CK 0009

In the Orissa High Court

Case No : Miscellaneous Appeal No. 62 of 1973

J. Balunkeswar Dev and Others

APPELLANT

Vs

Braja Kishore Misra and Others

RESPONDENT

Date of Decision : 08-08-1975

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 41, 44(2)

Citation : (1975) 41 CLT 1232

Hon'ble Judges : K.B. Panda, J

Bench : Single Bench

Advocate : S. Misra and B. Das, for the Appellant; A.B. Misra and U.N. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Panda, J.—This is an appeal u/s 44(2) of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter referred to as the Act) by some of the villagers of Birabhadrapur Samil Nilambarpur against the concurrent finding of the Assistant Commissioner as well as the Commissioner of Endowments, Orissa, Bhubaneswar declaring the Petitioners (Respondents 1 to 4 herein) as the hereditary trustees of the deities Balunkeswar Dev, Gopinath Devi and Durga Thakurani arising in the following circumstances: Respondents 1 to 3 filed a petition u/s 41 (a) of the Act with a dual prayer, namely, (a) that the three deities, that is Balunkeswar Deb, Gopinath Dev and Durga Thakurani are their private deities and (b) that they are hereditary trustees of those deities. The Hindu public of Birabhadrapur resisted their claim. Their specific case was that the villagers had installed the deities and they are in management of the institutions and hence prayed that the petition be rejected.

2. Before the Assistant Commissioner, the Petitioners examined four witnesses and the opposite parties five. Several documents were filed on behalf of both the parties. On an assessment of the oral and documentary evidence, the learned Assistant Commissioner of Endowments came to hold that the deities were not

the private deities of the Petitioners but they were public and thus rejected the first prayer. However, in respect of the second prayer, he granted the same holding that the Petitioners along with opposite party No. 8 Niranjan Tirthgoswamy are the hereditary trustees of those deities. As against that the Hindu public of Birabhadrapur representing the deities preferred an appeal before the Commissioner of Endowments. He upheld the finding of the Assistant Commissioner occasioning the present appeal wherein the Endowments Commissioner has been also impleaded as a party-Respondent.

3. It was contended on behalf of the Appellants that the theory of lost grant was not available; on their own admission under Ext. A, the Petitioners have accepted the position of taking some outsiders as trustees which is detrimental to their case; the marfatdari right cannot be alienated, and lastly that the finding of the Courts below that is view of long possession the Petitioners have acquired the right of hereditary trusteeship is untenable in law.

Mr. S. Misra (2), learned Counsel for the Appellants made a great grievance that the learned appellate Court has not at all discussed the oral evidence. But when asked to point out what evidence was in his favour which has been over-looked, nothing could be pointed out.

4. Some of the admitted features of the case are as follows:

In three settlement records of 1898, 1911 and 1927 (Exts. 1, 2 and 3 respectively), the Petitioners have been recorded as the Marfatdars of the deities. Further, after vesting in 1963, in Case No. 74 of 1964, the lands have been settled with the deities indicating the Petitioners as marfatdars (Ex. 7). Initially the Misra family, that is, the Petitioners along with one Agadhu Rath were recorded as marfatdars. Agadhu Rath under Ext. F on 7-1-1913 transferred his right of hereditary trusteeship by a Seba Samarpan Patra in favour of one Madhusudan Tirthagoswamy who is Guru of Niranjan Tirtha Goswamy (present Respondent no 4). The bulk of the evidence was directed against the first prayer, namely, whether the deities are private or public. The learned Assistant Commissioner has dealt with all the oral and documentary evidence and while rejecting the first prayer has granted the second one. The public have only come into the picture in 1956. Before that there is nothing on record regarding their management of the deities. However, their case that they were managing the deities from the Koth fund has been disbelieved because "not a scrap of paper" was produced by them in support of the same while there is unimpeachable evidence on the side of the Petitioners from the year 1898 to show that the Misra family and the Rath family were the Marfatdars of the three deities. True, the origin of the deities and who had installed them all are buried in antiquity, and the only documentary evidence on which we can lay our hands on dates back to 1898 when in that settlement record (Ex. 1) and in two subsequent settlement records, the Misra family along with Rath family appears as Marfatdars. That position can hardly be assailed. Further, as already indicated, under Ext. 7, after vesting they are also continuing as Marfatdars in the record. - The first and the

last interference I was only in the year 1958 when the Endowment Commissioner appointed some of the villagers along with the Misra family members as trustees to manage the affairs of the deities. The question thus arises is whether this interference puts an end to the hereditary trusteeship claimed by the Petitioners. Both the Courts have directed their attention to this aspect of the case and have held that it was with the consent of the hereditary trustees that is the Misra family and as such it was not in any way detrimental to their interest. In this respect, the following observation of the Assistant Endowment Commissioner is material.

12. The O.P. Banchanidhi Mohapatra says that the Misra family members were recorded as marfatdars as per the wishes of the villagers for convenience for payment of annual rents of the deities, which version cannot be relied upon. Hence even though the entries of the Petitioners and O.P. 8 as marfatdar of the deities in the record-of-rights will not ipso facto create or extinct any right of theirs in the lands, this much can be stated from their payment of rents, that they are in possession of the lands of the deities continuously.

13. The nature of the lands as could be seen from these record-of-rights, is that the lands are "Tanki Bahei" and "Bajyapti Madhyasatwadhikari" which implies the public nature of the lands, i.e. implying some sort of public grants which will go against the Petitioner's case that the deities with their endowments are their private.

Regarding the participation of some of the villagers in the management of the deities, it has been said

Ext. A/1 is an application given by the Petitioners Braja Kishore Misra, Nilakantha Mishra, P.W. 3 Ananta Charan Patnaik and others to the Inspector of Endowments, on 3-12-1970, wherein it has been stated that they are agreeable to the appointment of trustees for the institution in question. The mere signature of Braj Kishore Misra and Nilakantha Misra (Petitioners in this case) were proved through one of the Petitioners examined in this case Sri Baidyanath Misra who has not signed in that document. There is nothing in his evidence as to under what circumstances they have signed.

The learned Assistant Commissioner has held that the signature of P.W. 3 has only been proved, but there is no evidence as to the circumstances in which he subscribed his signature thereto. Besides he held that document was during the pendency of the proceedings and as such was immaterial. The document on which much reliance was placed on the side of the villagers is Ext. J and Ext. J /1, wherein two trustees were appointed in the year 1956 and then in 1970 by the Endowment Department asking Bhimasen Sahu to collect rents -from the Bhag-tenants. In respect of Ext. J, the learned Assistant Commissioner has held

I see that the three persons appointed as trustees therein are no other than Shyamaprakash Brahmachari who is the co-recorded marfatdar with the Misra family and two another persons are the Petitioners Misra family. To this

explanation was given on behalf of the Petitioners that since because they are not in any way disturbed by such appointment, they did not come up to challenge the same, though they say that the appointment of them as nonhereditary trustees was illegal. This explanation offered by the Petitioners cannot be brushed aside since the nature of the institution was not judicially decided and I hold that this Ext. J as such will be of no help to the opposite parties to say that the institutions are having no hereditary trustees.

I see nothing wrong in this finding of the learned Assistant Commissioner which has been upheld by the Commissioner. Ext. 8 only indicates that the villagers wanted to take Dayanidhi Misra of Birabalabhadrapur, a member of the Misra family as a trustee saying that during the period of trusteeship of Shyamaprasad Brahmachari, Dayanidhi Misra and Nilakantha Misra there was no improvement while during the trusteeship of Dayanidhi Misra there was much improvement of the institution. This rather helps the case of the Petitioners than demolishing their case. As already indicated, under Ext. 7 series, the rent schedules under the provisions of the Orissa Estates Abolition Act, 1951 are 10 the names of Misra family members for the lands of the deities and the names of the deities find place taking them, that is, the Misra family as marfatdars. In view of all these documentary evidence, right from 1898 onwards wherein the Misra family along with Rath family and thereafter on transfer by Rath in 1913 along with the Misra family the predecessors of Respondent No. 4 are in the management of the deities" affairs the claim of the Appellants appears fictitious. That position also continues after the vesting. In the face of these documentary evidence, it would be preposterous to hold to at the villagers have been substituted in place of these hereditary trustees. Their appointment first in the year 1956 was along with the Misra family and not in place of the Misra family. In other words, the right of the hereditary trusteeship of the Petitioner along with Respondent No. 4 did not cease nor the appointment of some outsiders was anything against their interest. All that they wanted that management should be better and in consequence thereof the Endowment Commissioner put in some villagers along with the hereditary trustees. This is in no way derogatory to the rights of the hereditary trustees. To conclude, therefore, in view of the voluminous documentary evidence in favour of the Petitioners and a lack of any evidence to militate against that, the claims advanced by the villagers that they are all along looking after the deities can hardly be accepted. The learned Courts below have rightly decided that the deities are public, whereas the Petitioners are only the hereditary trustees thereof.

5. In the result the appeal fails and is dismissed with costs.