

(2005) 01 OHC CK 0011
In the Orissa High Court
Case No : M.S.A. No. 10 of 2004

Jogiram Mohapatra and Others

APPELLANT

Vs

Sibaram Pradhan and Others

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(2)
Orissa Hindu Religious Endowments Act, 1951 — Section 27, 41(1), 44(I), 7

Citation : (2005) 1 OLR 612

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : S.P. Mishra, S. Das, S. Mishra and S. Nanda, for the Appellant;
Srinivas Mishra (2), S. Mantry, A.K. Mishra, A.K. Sharma, M.K. Dash, R.N. Prusty
and P.K. Das, (Caveator), for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The judgment dated 29th June, 2004 passed by the Deputy Commissioner of Endowments, Orissa, Bhubaneswar in F.A. No. 2 of 2002, in exercise of the powers conferred upon him u/s 44(1) of the Orissa Hindu Religious Endowments Act, 1951 is assailed in this appeal.

2. The appellants as petitioners filed Original Application No. 16/97 u/s 41(1)(i) of the Orissa Hindu Religious Endowments Act before the Court of Addl. Asst. Commissioner of Endowments, Berhampur, inter alia, praying for a declaration that they were the hereditary trustees of the deity Sri Sri Sidheswar Mohadev bije at village Maradakote in the district of Ganjam. According to the petitioners, the said religious institution was founded by the then Raja Saheb of Khallikote more than 160 years back. He had endowed substantial landed properties for carrying out the Seba Puja, Nitikanti and Management of the deity. He engaged the ancestors of the petitioners for performance of the Seba Puja of the deity. Some lands were earmarked for the ancestors of the petitioners for performing the Seba Puja. According to the petitioners they acted as sebayats and except

them no other persons had got any right, title, interest and possession over the land endowed by the founder. Since the date of foundation of the religious endowment the ancestors of the petitioners, from generation together are performing the seba puja, janiyatra of the suit deity and they are also managing the suit institution hereditarily as per the prevalent customs. It was alleged that the opposite parties, who were villagers of the nearby villages were trying to constitute a Non-hereditary Trust Board u/s 27 of the Orissa Hindu Religious Endowments Act for the management of the suit institution and as the said action would be prejudicial to the rights and interest of the petitioners, they filed the Original Application for appropriate adjudication and declaration.

3. The opposite parties appeared and filed a counter taking a stand that the Commissioner of Endowments in exercise of the powers conferred u/s 7 of the Orissa Hindu Religious Endowments Act, 1951 have appointed them as members of an Interim Trust Board for smooth management of the institution. It was averred that the petitioners have no locus standi to remain in management of the institution and that in fact they were never in management. The Zamindar of Khallikote was the trustee in respect of the institution, which is a public religious Endowment, and the institution was managed by the villagers. The opposite parties also strongly repudiated all the averments made in the Original Application.

4. The Asst. Commissioner in the light of the pleadings framed five issues. In order to substantiate their case the petitioners examined three witnesses and exhibited twenty documents and opposite parties examined three witnesses and exhibited several documents. The Asst. Commissioner after discussing the evidence both oral and documentary held that the institution is a public religious endowment and the petitioners from the time of their ancestors were managing the suit institution and its property. On the basis of such conclusions the Asst. Commissioner held the petitioners to be the hereditary trustee of the suit institution.

5. Being aggrieved by the said order, the opposite parties filed FA No. 2 of 2002 before the Deputy Commissioner of Endowments, Orissa, Bhubaneswar. The lower appellate authority in paragraph-5 of the judgment observed that no proper notice satisfying all the ingredients of Order 1 Rule 8 of the CPC was issued. It was also observed that though a petition under Order 1 Rule 8 of the CPC was filed by the petitioners before the Asst. Commissioner the same did not disclose the names of the persons chosen to represent the case on behalf the Hindu Public. It was also observed that the cause title of the amended plaint does not disclose the names of the persons who have been selected by the petitioners on behalf of the Hindu Public to represent the persons interested except the name of opposite party No. 1. On the basis of such observation the Deputy Commissioner held that it cannot be said that full compliance of the mandatory requirements of Order 1 Rule 8 of the CPC have been made and remanded the case to the Addl. Asst. Commissioner of Endowments to dispose of

the proceeding afresh according to law from the stage of issuance of notice under Order 1 Rule 8 of the Civil Procedure Code. The said order as stated earlier is assailed in this appeal.

6. Mr. S. P. Mishra, learned counsel appearing for the petitioners forcefully submitted that the requirement of Order 1 Rule 8 of the CPC have been duly complied inasmuch as a draft of the notice was filed by the petitioners before the Court below which was duly accepted and was thereafter published in the local newspaper. Thus the findings arrived by the lower appellate Court are not just and proper. It was further submitted that the lower appellate Court failed to appreciate the provisions of Order 1 Rule 8 of the CPC in proper perspective. According to Mr. S.P. Mishra, Order 1 Rule 8 of the CPC stipulates that one person may sue or defend on behalf of all having same interest in the lis. Relying upon the decision of this Court in the case of Sri Sri Balunkeswar Mahadev and Another Vs. Smt. Brajeswari Mohapatra and Another, Mr. Mishra forcefully submitted that the object for which Order 1 Rule 8 of the CPC has been enacted is to facilitate a decision of a question relating to involving a large body of persons interested, without recourse to ordinary procedure, where each individual has to be impleaded or has to maintain action by a separate suit. Where there is community of interest amongst numerous persons to avoid expenses, trouble and multiplicity of proceedings, few of them are allowed to represent the whole. Thus the object of Order 1 Rule 8 of the CPC is to avoid multiplicity of proceedings and effectively take care of all persons interested in the lis involved. As there is substantial compliance of the said provision it would not be proper to set aside the order passed by the Asst. Commissioner merely on the said ground. According to Mr. Mishra, the Hindu public were not only impleaded but also notice was issued after the same was approved by the Asst. Commissioner. Thus there is no infirmity in the order passed by the Asst. Commissioner and the Deputy Commissioner acted illegally and with material irregularity in remanding the matter for fresh trial.

7. Mr. Mishra-2, at the other hand, forcefully submitted that the Hindu Public who are the real persons interested having not been impleaded as parties in the Original Application, the appellate authority rightly remanded the case for fresh disposal. According to Mr. Mishra-2, the notice under Order 1 Rule 8 of the Civil Procedure Code, which was issued was defective and did not comply with the mandatory requirements of Order 1 Rule 8 of the Civil Procedure Code. Thus there was no notice in the eye of law and it is a fit case where this appeal should be dismissed and the order passed by the Deputy Commissioner is should be upheld.

8. I have heard learned counsel for the parties at length. Perused the materials available meticulously and considered the submissions made diligently. Perusal of the Original application and the averments made in the petition reveal that the Members of the Interim Trust Board constituted by the Commissioner of Endowments u/s 7 of the Orissa Hindu Religious Endowments Act were only

impleaded as parties to the Original Application. The notice issued under Order 1 Rule 8 of the CPC and published in the daily newspaper was not in accordance with law and was defective. Law is well settled that the notice issued under Order 1 Rule 8(2) of the CPC must disclose as to who are the persons who have been selected to represent the persons interested in the case. The notice in the instant case having not been issued in such manner, the trial of the case has been vitiated. The provisions contained under Order 1 Rule 8 of the CPC are mandatory and not merely directory. The same are essential pre-conditions for trial of a representative suit. The notice must disclose the nature of the suit as well as relief claimed therein in order to enable the persons interested to get them impleaded as parties to the suit either to support the case or to defend the case. Further the notice must mention the names of the persons who have been permitted to represent them so that the persons interested may have an opportunity of knowing who have been selected to represent them. Admittedly, the Original Application is one u/s 41(1)(i) of the Orissa Hindu Religious Endowments Act. Further except the persons who were appointed as non-hereditary trustee u/s 7 of the Orissa Hindu Religious Endowments, no other person was impleaded as a party representing the Hindu Public. The object of Order 1 Rule 8 of the CPC being to avoid multiplicity of proceedings, it is just and proper that the Hindu Public who are the persons having interest in the lis are duly notified. The Deputy Commissioner of Endowments has rightly held that the- mandatory requirements under Order 1 Rule 8 of the CPC were not complied. After going through the order and other materials available I find that the lower appellate Court has not committed any error. The order does not suffer from any infirmity or illegality. There is also no error apparent on the face of the record. I am therefore not inclined to interfere with the order passed by the Deputy Commissioner of Endowments and dismiss the appeal. The Addl. Asst. Commissioner of Endowments, Berhampur is directed to conclude the trial of O.A. No. 16/97 as expeditiously as possible, preferably within a period of one year.

Parties to bear their own costs.