

(1955) 01 OHC CK 0001
In the Orissa High Court
Case No : F.A. No. 53 of 1950

Kalpataru Das

APPELLANT

Vs

Balkrishna Patro and Others

RESPONDENT

Date of Decision : 18-01-1955

Acts Referred:

Orissa Hindu Religious Endowments Act, 1939 — Section 12, 6(7), 64, 64(1), 64(2)

Citation : (1955) 21 CLT 567

Hon'ble Judges : Rao, J;Narasimham, J

Bench : Division Bench

Advocate : R.K. Das, for the Appellant; S. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

Rao, J.—The Plaintiff is the Appellant. He filed the suit against the Commissioner of Hindu Religious Endowments Orissa, Cuttack and four others for a declaration, that the temples of Raghunath Jiew and Hanuman jiew known as Kulia Math and the properties standing in the names of the said deities are not public religious endowments but are private Debottar properties of the Plaintiff and the said properties and premises of the Muth attached to those are not a Muth within the meaning of Section, sub-Section 7 of the Orissa Hindu Religious Endowments Act and for setting aside the decision of Defendant No. 1, the Commissioner of Hindu Religious Endowments, Orissa, dated 30-5-1945 and for a permanent injunction restraining Defendant No. 1 from taking any action under the said Act.

2. The Plaintiff's case, in brief, is that he was a Grihastha that the suit endowments are his private endowments that the ancestor Gopal Das who installed the deities was also Grihastha that his successors Iswar Das, Dasarathi Das and himself were also Grihasthas each being the adopted son of his ancestor that consequently the endowments are not public endowments and the institution is not a Muth and that therefore the order made u/s 64(1) should be set side.

3. The Defendants contentions is that the suit endowments are public endowments and the institution is a Muth and that Iswar Das. Dasarathi Das and the Plaintiff were the Chelas of their respective Gurus who were the. Mahantas of the institution. The Defendants also contend that on account of mismanagement of the Plaintiff, an enquiry was instituted in which it was found that the Plaintiff removed the Aruna pillar and the Samadhis i that tile respective Mahantas are Nihangi Baishnabs i and that the order made u/s 64(1) of the Act is valid and correct.

4. The Plaintiff examined 10 witnesses in support of his case and filed Exts. 1W4. Exts 1 to 1 (h) are the rokad books of Kalpataru Das from 1343 to 1352, It can be seen that the account books of the institution filed by the Plaintiff are only the account books during his time. No account books of the institution prior to his time, that is, during the times of Gopal, Iswar Das and Dasarathi Das which are very material to the case, and which would show the history of the institution are filed by him. Exts. 2 series are the sale deeds executed in favour of Iswar Das and Dasarathi Das by various vendors beginning from 1895, Ext. 3 series are certified copies of Khatians of mouza Kulia and Baroda and Ext. 4 is a hand note executed by Siba Rout in favour of Mahant Iswar Das dated 5-10-1882

5. The main dispute in the suit is whether the endowment in question is a private religious endowment outside the purview of the Orissa Hindu Religious Endowments Act. The Plaintiff's case is mainly that the Plaintiff's ancestors acquired for the benefit of themselves and their families the properties covered by Exts. 2 series and installed the deities for their own worship and consequently the endowment is a private endowment. For this contention he says that he traces his origin from Gopal Das and states that Gopal Das was a Grihastha and as he had no son, he brought Iswar Das, his brother's son and adopted him. He also says that Iswar Das was a married man but he too had no children and so he adopted his nephew Dasarathi Das. As Dasarathi Das also had no issue, he adopted the Plaintiff who happened to be his brother's son. The Plaintiff's case is that all of them are called Mahants and Chelas respectively as a mark of respect by the local people. P. W. 1 deposes that he has seen the house of the Plaintiff that the Thakurs and the Plaintiff's residence are within one-compound in that the Thakurs are their family deities and that the public go there for Darsan after obtaining the permission of the Plaintiff. He denies the existence of any Sanskrit Toll or any Dharmasala within the premises and says also that there were no students ever reading Sanskrit. He states that Dasarathi Das was the adoptive father of the Plaintiff that he was a married man that Iswar Das also was married and was the President of the Union. He cannot give even a single instance of the Plaintiff's refusing permission to anyone for Darsan of the deities inside the temple. P. W. 2 Brahmananda Kar deposes that the deities are inside the compound of the residential house of the Plaintiff that they are his family deities and that the public take the permission of the Plaintiff for having Darsan of the deities and corroborated the evidence of P. W. 1. But in cross-examination this witness admits this signature in the petition Ext. A and also admits that he

signed after reading the document. Ext. A is a petition sent to the Commissioner of Hindu Religions Endowments alleging that the suit institution is a Muth presided over by Mahants belonging to the order of Nihangi Baishnabs and that the Plaintiff has married two wives and is mismanaging the institution. In the light of this document, his evidence is not only useless but also corroborates to a great extent, when read along with Ext. A the case of the Defendants. P. W. 3 evidence also is on the same line as that of P. W. 1. He is a gumasta working at Kendupatna in the firm of Kishorichand of Cuttack and P. W. 1 is a dealer in jute goods in that firm. P. W. 4 also speaks in the same strain and says that Gopal Das, Iswar Das and Dasarathi Das were married peons and lived with their families in Kulia Muth. P. W. 5 is also a witness to the same effect as also P. W. 6. P. W. 8 is a peon under the Plaintiff and says that the public do not go to the temple for Darsan and anyone desirous of having the Darsan of the deities has to take their permission. He also admits that P. W. 7 is a tenant of the Plaintiff. P. W. 9 is the Tahasildar of the Plaintiff and supports the case of Plaintiff. P. W. 10 is the Plaintiff himself and deposes in support of his case. He cannot say to which Sampradaya he belongs. He denies of having any accounts prior to 1343 and says that all the prior accounts were destroyed by white-ants in 1343, He admits that though he was present in the Muth when the Commissioner visited that place, he could not see him as he was ill.

6. Though the Plaintiff alleged that he, his father and his grand-father were all adopted sons, no documentary evidence is forthcoming to show that any adoption was made by anybody. The witnesses for the Plaintiff do not even state the title or the details regarding any of the adoptions alleged. In my opinion, the Plaintiff had recourse to this theory of adoptions simply to get out of the difficulty that his ancestors were described in the sale deeds Exts. 2 series as the Chelas of their respective Gurus. In all the sale deeds, the vendee is described as the Chela of so and so and Mahant of Kulia Muth. In order to explain away this description in the sale deeds, the Plaintiff came forward with the case that they were all adopted sons. Exts. 2 series, the sale deeds from the year 1895, clearly show that the properties were acquired in the names of the deities by the Mahant for the time being who was described as the Sebait Marfatdar. In none of the sale deeds is the vendee described as the son or the adopted son of so and so. The sale deeds also show that all these persons are Nihangi Baishnabs. A Nihangi Baishnaba is a celibate Sannyasi.

7. In Wilson's Glossary, "Nihan" is said to mean "Celibacy Naked, free from care, a wanderer as opposed to Grihasth or a house-holder". In the case of Basdeo v. Gharib ILR 13 All. 256 and in the case of Gairai v. Achaibar ILR 16 All. 191 P.C. it is observed that a Nihangi is a celibate.

8. In Gopal Chandra Praharaj's Bhasakosh, the meaning of "Nihang" is given as a Sannyasi who has taken the vow of celibacy.

9. Thus, from the Plaintiff's evidence wherein his ancestors are described in the sale deeds taken by them as Nihangi Baishnab, it cannot be accepted for a

moment that his ancestors were grihasthas and had families and married wife.

10. The first witness for the Defendant is the Head Pandit of the Ravenshaw Collegiate School. He was a student of the. Kulia Muth Sanskrit School in 1933 and 1934. He deposes that in the Muth there used to be religious discourses that there were many students who were fed and given Sanskrit education that during his studentship he was residing in the Muth, that the previous Mahant had also many Sisyas and that during his time there was a Garud Stambha in front of Bishnu Pratima. According to him there was also a Dharmasala attached to the Muth and Atithies and Abhyagats were also fed there. He also speaks to the existence of Samadhis on the side of Hanuman temple. In cross examination he states that the Sanskrit Toll was inside the Muth in 1933. In cross-examination it was elicited that Mahant Dasarathi Das was the Secretary of the Managing Committee. Mr. Das the learned Counsel for the Appellant contends that Dasarathi Das being the Secretary of the Managing Committee goes to prove that he was a Grihastha and not a Nihangi Baishnab. In my opinion, there is nothing inconsistent with a Nihangi Baishnab who is a Mahant of a Muth, being a Secretary of the School Committee. In cross-examination of this witness he says that even outsiders used to join in religious discourses. D. W. 2 was teacher in the Kulia Muth Sanskrit Toll from 1922 to 1934. He says that there were many students residing in the Muth at that time that there used to be religious discourses, teaching in Sanskrit and Atithi Seba in the Muth that there were many Sisyas in the Muth that there was one Aruna Stambha before the temple and that there were Samadhis in the Muth that the public used to have Darsan without the permission of the Mahant. In cross-examination he says that the public used to contribute a part of the expenses of the Sanskrit School and he denies that the Mahants of that Muth used to call their sons as Chelas. D. W. 3 is Sridhar Das Babaji who is Chela of Bimbadhar Das and who is aged 75 years. He deposes that, is Muth is a Nihangi Muth and that Kulia Muth is also a Nihangi Muth that he had seen the Muth during the times of Gopal Das, Iswar Das, Dasarathi Das and the Plaintiff and that they were all Nihangi Baishnab Das and Celibates. He was invited by Dasarathi when the Plaintiff became the chela. He also deposes that the Plaintiff was given sacred thread, Dora and Kaupin by Dasarathi Das, his Guru and that Madhabananda Swamy Adhikari of Gopinathpur gave Kanthi. He also speaks to the existence of. Aruna Stambha and 6 or 7 Samadhis in the Muth. D. W. 5 is a pleader practising in Cuttack. He deposes that he visited the temple in the months of, May and June 1950 that on Kumar Purnima day, the local people are invited each year when Bhagabat is recited and Prasad offered to the people that there are Zanana inside the premises now and no outsiders are freely allowed but that previously public used to go there unrestricted for having Darsan and that any outsider coming to the village stayed in the Muth. In cross examination he deposes that there were no females in the Muth during the time of Dasarathi and public had access to the entire Muth. Thus the evidence of the witnesses on the Defendants' side who are all respectable persons clearly goes to show that the institution was a Muth that the ancestors

of the Plaintiff were all Nihangi Baishnabs that the Muth was maintaining a Sanskrit School that the public had a right of access to the Muth and were going into the Muth to worship the deities that the public were contributing something for the maintenance of the Sanskrit School that the Mahants had Sisyas in, the Muth that religious discourses were being held there that there was a Dharmasala in the Muth and that Atithis and Abhyagats were received by the Mahants and fed in the Muth.

11. The learned Subordinate Judge has discussed the entire evidence adduced on behalf of the Plaintiff and came to the conclusion that this evidence cannot be accepted. I agree with the learned subordinate Judge in the view he has taken of the oral evidence adduced by the Plaintiff. Some of the persons are interested witnesses and all of them could not give any details of either the adoption of the previous Mahants living as Grihasthas with their wives in the Muth. As already observed by me, all the sale deeds covered by Exts. 2 series is taken in the names of the, then Mahantas describing themselves as Nihangi Baishnabs. In all these sales deeds Iswar Das had been described as the Sebait Marfatdar and a Nihangi Baishnab. In the body of the sale deeds it has been clearly recited that the usufructs from those properties should be used for seba puja of the Thakurs established.... In one of the sale deeds Ext. 2(n) it has further been recited that after meeting all the expenses of the deities if anything remains, it may be used by the Marfatdars for other benefits. The learned Counsel for the Appellant contends that these recitals in the sale deeds do not bind the vendees or their successors. But in view of the fact that Iswar Das was a learned man and was also the President of the Union, it may be that he got these recitals made in the sale deeds specifically mentioned so that at no time after his death his successors could claim the properties as private properties. The khatians Exts. 3 series also show that these properties are not private properties but are properties of the endowment.

12. Section 6, clause (7) of the Orissa Hindu Religious/Endowments Act, 1939 say:

Muth means an institution for the promotion of the Hindu religion presided over by person whose duty is to engage himself in spiritual service or who exercises or claims to exercise spiritual headship over a body of disciples and succession to whose office devolves in accordance with the directions of the founder of the institution or is regulated by usage and includes places of religious worship other than a temple and also places of instruction or places for the maintenance of vidyarthies or places for rendering charitable or religious services in general which are or may be appurtenant to such institution.

13. The evidence of the Defendant's witnesses which the learned Subordinate Judge accepted and in this I agree with the learned Subordinate Judge, clearly shows for the reasons already stated above that the suit institution is a Muth as denied in Section 6, clause (7) and is a public, endowment. The evidence also clearly shows that the public have a right of access into the Muth for purposes of

worship and that religious discourses were held in the Muth which the public attended.

14. Mr. R.K. Das contends that the burden of proof to show that it is public endowment rests upon the Defendants which they failed to discharge. The Plaintiff's suit itself is for setting aside in order made by the Commissioner and the suit is filed u/s 64(2) Section 64 says:

(1) If any dispute arises as to whether an institution is a math or temple as defined in this Act or whether a temple is an excepted temple, such dispute shall be decided by the Commissioner.

(2) Any person affected by a decision under Subsection (1) may within one year, institute a suit in the Court to modify or set aside such decision is but subject to the result of such suit, the order of the Commissioner shall be final.

15. Mr. R.K. Das in support of his contention cited the cases of AIR 1938 195 (Privy Council) Puj Maya Rishi and Ors. v. L. Ramchand and Ors. AIR 1964 Lah. 31 AIR 1940 7 (Privy Council) and AIR 1941 56 (Privy Council) .

16. In the case of AIR 1938 195 (Privy Council) . It was held by the Judicial Committee that "the fact that properties have descended from guru to chela does not necessarily lead to the conclusion that a property, when acquired by a mahant, loses its secular character and partakes of religious, character." In this case the dispute related to a particular item of property as to whether it became a trust property after acquisition or a secular property. A Mahant of a Muth can have separate" property which descends to his Chela, but that does not make it property of the institution. The decision in this Case does not apply the facts of the present case where the entire institution is claimed as private property.

17. In the case of Puj Maya Rishi and Ors. v. L. Ram Chand and Ors. AIR 1964 Lah. 31 it was held that "the mere fact that the person acquiring property in dispute is an ascetic does not establish that he acquired the property for religious purposes, though it is a circumstance that ought to be taken into consideration in determining whether it is religious or secular. The reason is, a man's religious opinions or professions do not make him incapable in law of holding property. So also, descent of property from a Guru to his Chela does not warrant" the presumption that it is religious property." There is no dispute with regard to this proposition of law, but this decision does not apply to the facts of the present case, because in this case the- Plaintiff is not claiming the particular item of property as secular property but his case is that the entire institution is not a Muth but is a private endowment.

18. In the case of Babu Bhagwan Din and Ors. v. Gir Har Saroop and Ors. AIR P.C. 7 it was held by the Judicial Committee that where the grant of a temple is made to an individual and his heirs in perpetuity (descendant after descendant and generation after generation) this fact is not reconcilable with the view that the granter was in effect making a wakf for a Hindu religious purpose and that

where a grant of a temple is made to an individual or family and the family has treated the temple as family property, dividing the various forms of profit whether offerings or rents, it is not enough to deprive the family of their private property to show that Hindus willing to worship have never been turned away or even that the deity has acquired considerable popularity among Hindus of the locality or among persons resorting to the annual mela, and that facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such, a case and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual or family." The facts of this case are quite different and do not apply to the contentions put forward by Mr. R.K. Das. In this case the suit was framed u/s 92 decided in the case was whether the order of the District Judge made under the Charitable and Religious Trusts Act of 1920 precluded the Respondents from disputing that the temple was the subject of a public religious trust. That order was made in the presence of five members only of the family and it is not shown that the other members are bound by it according to any principle of representation. Hence, their Lordships held that it is difficult to see how these other members can be prevented from claiming the property a decision from which by Section 12 there is no appeal is a decision in a summary proceeding which is not a suit nor of the same character as a suit that it has not been made final by any provision in the Act and that the doctrine of res Judicata does not apply to bar a regular suit even in the case of a person who was a party to the proceedings under the Act. The facts of this case do not therefore apply inasmuch as the order sought to be set aside in the Plaintiff's case is an order u/s 64(2) which is final, if it is not set aside by a suit.

19. The decision in the case of Committee of Management of Gurdwara Penja Sahib and Anr. v. Lieutenant Sardar Mohammad Nawaz Khan and Ors. AIR 1241 P.C. 56 is to the effect that "where the original right to certain property was with the proprietary body, the burden lies heavy on the persons who assert that it belongs to a religious institution to prove dedication by user of the whole of the land for the purpose of the institution and it is beside the point to show that the opposite party's evidence does not exclude the theory of dedication. It is clear from this case that the original right is an individual right and in such cases certainly the burden-of proof lies upon the person who asserts that it belongs to a public endowment, the name of the deity of the institution and it is for the Plaintiff who asserts an individual right to it, to prove that it is not public trust.

20. The Plaintiff alleges in the plaint that an order was passed u/s 64(1) by the Commissioner of the Hindu Religious Endowments and that the suit is filed to set aside the same Ex. A, the petition filed by the public before the Commissioner of Endowments clearly alleges that the Plaintiff was mismanaging the institution and alienating the properties. The Endowment Commissioner after personal inspection when he found according to the report, the Samadhis removed and the Aruna Stambha removed, made an enquiry and passed an order u/s 64(1).

The Plaintiff failed to prove that the institution was his private property and that he is a Grihastha as also his ancestors.

21. For the reasons stated above, I agree with the learned Subordinate Judge that the suit institution is a Math and is a public endowment that it was presided over by Mahants who were Nihangi Baishnabs that the Plaintiff is guilty of mismanagement and that the order of the Endowment Commissioner is right.

22. The appeal, therefore, fails and is dismissed with costs.

Narasimham, J.

23. I agree.

24. Appeal dismissed.