
(1989) 09 OHC CK 0040
In the Orissa High Court
Case No : Second Appeal No. 286 of 1983

Kanhu Khuntia

APPELLANT

Vs

Padmalava Khuntia and Others

RESPONDENT

Date of Decision : 07-09-1989

Acts Referred:

Sri Jagannath Temple (Administration) Act, 1952 — Section 15B, 5, 6

Citation : AIR 1990 Ori 182

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : S. Misra-2, S. Mantry and R.C. Rath, for the Appellant; R. Ch. Mohanty and R.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—Plaintiff is the appellant against a confirming judgment.

2. Plaintiff filed the suit for declaration of his "Seva-pali" right for the period 27th day of "Simha" to 19th. day of "Dhanu" at "Bata-Ganesh" inside the temple of Lord Jagannath at Puri and for injunction restraining the defendants from interfering with such right. Plaintiff is the son of one Baman Khuntia. Defendants 1 to 6 are the legal representatives of Ramanath Khuntia and defendant No. 7 is the son of Palabhadra Khuntia. The entire year is divided into three periods, the first period being 1st day of "Mesha"(Baisakh) to 26th. day of "Simha" (Bhadra); the second period between 27th. day of "Simha" (Bhadra) to 19th. day of "Dhanu" (Pousha) and the third period being from 20th day of "Dhanu" (Pousha) to 30th day of "Mina"(Chaitra). So far as the first period is concerned, it is defendant No. 7 who performs the "Pali" and it is in accordance with the registered partition deed dated 21-6-1934 (Ext. F). There is no dispute about the same and defendant No. 7 was also ex parte in the court below. The real dispute between the plaintiff on the one hand and defendants 1 to 6 on the other is in respect of the two other periods. Under the deed of partition (Ext. F) the second period namely from 27th day of "Simha" till 19th day of "Dhanu" had been

allotted to Ramanath's branch and the third period from 28th. day of "Dhanu" till 30th day of "Mina" had been allotted to Baman's branch represented by the plaintiff. But in the Record-of-Rights of the Jagannath Temple it has been recorded that the second period is allotted to the plaintiff and the third period to defendants 1 to 6 and, therefore, the present controversy. According to the plaintiff case, the plaintiff was performing the "Pali" for the second period and defendants 1 to 6 for the third period and it has been so recorded in the Record-of Rights prepared under Shri Jagannath Temple Act. The Record-of-Rights so prepared had not been challenged by defendants 1 to 6 of their predecessor-in-interest. The partition deed on which the defendants rely had never been acted upon and notwithstanding the said partition deed, the plaintiff and prior to him his father Baman was performing the "pali" for the second period. It is only in the year 1976 defendants 1 to 6 tried to exercise their right in respect of the second period for the first time and raised dispute with regard to the wrong entry in the Record-of-Rights and, therefore, the plaintiff filed an application before the Administrator of Shri Jagannath Temple to render necessary protection, but since that application was not disposed of, the plaintiff filed the present suit.

3. In the written statement filed by defendants 1 to 6, it has been averred by them that there had been a division under the partition deed of the year 1934 and according to the said division, Baman (plaintiff's father) was allotted the third period and Ramanath (father of defendants 1 to 5) was allotted the second period, but a mistake crept in while preparation of the Record-of-Rights of the Temple. It was also averred that though in the Record-or-Rights the factum of partition was noted but it was wrongly mentioned about the performance of "Pali" and notwithstanding the entry in the Record-of-Rights, the defendants had been exercising their right in respect of the second period. The defendants also stated that they filed an application for correction in the Record-of-Rights and the said matter was still pending. On these averments, the defendants have prayed that the suit is liable to be dismissed.

4. The trial court framed as many as six issues and on issues Nos. 2 and 3 which are the most important issues, found on consideration of the entire evidence on record that practically there was no credible evidence to indicate enjoyment of the second Tali" by the plaintiff. It was also found that the entry in the registered partition deed executed by Balabhadra, Ramanath and Banian was correctly made and the disputed "seva-pali" (second period) had never been enjoyed by the plaintiff. On the question whether the entry in the Record-of-Rights of the Temple could be held to be binding or not, the trial court came to the finding that the Record-of-Rights could not be treated to be binding and the plaintiff could not be said to have performed title on the basis of the said Record-of-Rights in respect of the disputed "seva-pali". On these findings, the suit was dismissed,

5. On appeal, the lower appellate court came to hold that the entry in the Record-of-Rights of Shri Jagannath Temple had been made on the basis of the partition deed of the year 1934. It further found that since partition deed (Ext. F)

conferred right to have "seva-puja" on Baman in respect of the third period and on Ramanath in respect of the second period, the entry in the Record-of-Rights was an apparent mistake. It also found that defendants had already moved the matter before the Administrator for effecting necessary correction of the Record-of-Rights and such an incorrect entry could not out-weigh the effect of the partition deed of the year 1934 (Ext. F). So far as the oral evidence is concerned, the lower appellate court also agreed with the trial court and held that there was no credible evidence on the side, of the plaintiff to establish that the plaintiff enjoyed the disputed "Pali" (second period). On these findings, the judgment and decree of the trial court were upheld and the appeal was dismissed. Hence the present second appeal.

6. The only contention raised by Mr. Misra appearing for the plaintiff-appellant in this appeal is that in view of the provisions of Shri Jagannath Temple (Administration) Act, 1952, as well as Shri Jagannath Temple Act, 1954, the entry in the Record-of--Rights is final and conclusive and also binding on all parties, unless the same is altered in accordance with the provisions contained in the Act and in that view of the matter, the courts below committed an error in not giving due weight to such Record-of-Rights and outweighing the said record by preferring the deed of partition (Ext. F). In elaborating the aforesaid submission the learned counsel places reliance on Section 5 of the 1952 Act which says:--

"The record or a part thereof so prepared from time to time by the Special Officer u/s 3 shall be published in the prescribed manner and on such publication the said record or part thereof shall be final and shall not be called into question in any court of law except in the manner hereinafter provided :

Provided that"

Section 6 of the said Act provides for filing of objection by an aggrieved person before the District Judge and since no objection had admittedly been filed, Mr. Misra contends, the Record-of-Rights has become final and the rights of the parties must, therefore, be governed by the said Record-of-Rights. Under Orissa Act 11 of 1955 (Shri Jagannath Temple Act, 1954), "Record-of-Rights" has been defined in Section 4(1)(d) to mean, the Record-of-Rights prepared under the Puri Shri Jagannath Temple (Administration) Act XIV of 1952, and section 15-B(1) of the latter Act confers power on the Administrator to revise the Record-of-Rights on an application being made in that behalf by any "Sevak" after making due enquiry, and the same not having been done, the courts below committed gross error in not declaring the plaintiffs right in accordance with the Record-of-Rights prepared for "Bata-Ganesh".

7. Though the argument no doubt sounds attractive, but in my view does not stand a moment's scrutiny. I have perused the original Record-of-Rights in respect of the Temple Shri Jagannath. So far as "Bata-Ganesh" is concerned, it has been clearly stated therein that the "Sevaks" have distributed their "Pali" by

means of a partition deed. Having said so while recording, Baman Khuntia has been recorded in respect of the second period and Ramanath Khuntia has been recorded in respect of the third period. This is an obvious error, inasmuch as the partition deed reflects otherwise. The partition deed that has been produced in this case, i.e. Ext. F has not been disputed by the plaintiff and since the Record-of-Rights refers to the said partition deed and it is not the plaintiff's case that there was any other partition deed than Ext. F, the description as contained in Ext. F must prevail over the incorrect entry in the Record-of-Rights. That apart, both the courts below on consideration of the entire evidence on record have come to the finding that the plaintiff has failed to establish that either Baman or the plaintiff has ever exercised the right of having the "Pali" for the second period and, on the other hand, it is defendants 1 to 6 who have established that they have been performing the "Pali" for the second period. That is a pure finding of fact and cannot be disturbed in the second appeal. In that view of the matter, the conclusion of the two courts below that there has been a wrong recording in the Record-of-Rights is wholly justified, particularly when the Record-of-Rights itself indicates that the recording is being made in accordance with the partition deed and in fact, the partition deed (Ext. F) indicates otherwise. Consequently, I do not find any merits in this second appeal and the same is accordingly dismissed, but in the circumstances, without any order as to costs.