
(2010) 05 OHC CK 0015
In the Orissa High Court
Case No : Second Appeal No. 132 of 1982

Kasinath Panda and Others	Vs	APPELLANT
Raghunath Panda (Deleted) Basudeb Panda and Others		RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Sri Jagannath Temple (Administration) Act, 1952 — Section 3, 4, 5, 6, 6(1)

Citation : (2010) 2 ILR (Ori) 380

Hon'ble Judges : S.K. Mishra, J

Bench : Single Bench

Judgement

S.K. Mishra, J

1. The following substantial questions of law are formulated at the time of admission of the Second Appeal;

(i) Whether the Sebaiti right can be transferred for consideration ?

(ii) Whether the Record of Rights prepared under the Jagannath Temple Act would be final; and whether the same can be challenged in the Civil Court ?

2. In course of hearing of the Second Appeal, Sri Bijan Ray, learned Senior Advocate appearing for the Appellants also raised another moot question regarding nonjoinder of necessary party. He contended that the judgment rendered by the courts of original jurisdiction and first appellate jurisdiction are null and void as the Temple Administrator of Jagannath temple has not been arrayed as Defendant in this case.

3. The Plaintiffs, Respondents before this Court, filed the Original Suit bearing No. 7/30 of 1971-I in the court of Additional Munsif, Puri praying for declaration of their right over 131 days of Sebapali in the temple of Bimala Thakurani situated inside the Lord Jagannth Temple premises including 60 days of Sebapali in Jaysinghghara Bedha. The Plaintiffs plead that they and the Defendants are

the Sebayats in the temple of deity of Bimala Thakurani. The right to perform Seba Puja belongs to four branches known as Bedhas. The four branches are Mohapatraghara Bedha, Pandaghara Bedha, Padhiarighara Bedha and Jaisinghghara Bedha. The Plaintiffs and Defendants 10 to 13 belong to Padhiarighara Bedha, Defendants 1 to 9 belong to Pandaghar Bedha and Defendants 14 to 28 belong to Mahapatraghar Bedha. The other branch belonging to Jayasinghghar Bedha became extinct as Jayasingh Panda died issueless.

Since the four branches were performing Seba puja equally, each branch has right to perform Pali for 90 days, subject to increase or decrease of number of days in a month, as the month was calculated from Sankranti to Sankranti (solar month). In accordance with the prevailing custom, the Palis were transferable by way of sale or mortgage. Each branch of Sebayats used to maintain their respective Bedha-patras indicating the number of days of Sevapali enjoyed by them. So far as 90 days Pali of Jaisinghghara Bedha is concerned, 84 days had been alienated long since in favour of Padhiarighar or Pandaghar and in the process of alienation, Padhairighar was performing 162 days, Pandaghar was performing 108 days and Mahapatraghar was performing 84 days, whereas Jayasinghghar was performing only 6 days of Seba Puja.

4. Some disputes arose between the Sabaits in respect of performance of their Palis, the matter was referred to arbitration and the Arbitrator submitted a Bedha-patra to the Raja showing Sevapalis performed by Sebayats in each Bedha. In course of time, Jaisinghghar Bedha became extinct and Raja Mukund Dev who was the Superintendent of Lord Jagannath granted a Sanand to Ananta Panda, the ancestor of the Plaintiffs to perform the Sevapuja of Bimala Thakurani in respect of 6 days Pali, which was being performed by the Jayasingh Bedha.

It is further pleaded that out of 162 days of Seva puja being performed by Padharighar Bedha, the Plaintiffs' ancestor Chandra Panda had 48 days. On the basis of Sanand, he acquired another 12 days and on the basis of three sale deeds, he acquired the right to perform Sevapuja for 37 days. Then the Raja granted a Sanand in respect of six days. In 1926 or 1930, the Temple Authorities recorded the Sevapalis discharged by each Sevait and there it was found that the Plaintiffs had performed 8 Pali 9 Biswas or 103 days and the aforesaid record was signed by Bhobani, father of the Defendants 2 to 4 acknowledging the correctness of the same. Subsequent to the said Record of Rights, the Plaintiffs acquired 27 days Sevapali and they performed 130 days of Seva Puja including 6 days of Jayasinghghar Bedha.

5. In 1952, before the Special Officer appointed by the Government to prepare the Record of Rights, the Plaintiffs had filed the Bedha Patra and it has been so recorded in the Bedha Patra that Plaintiffs have 130 days of Pali. In 1968, Bhobani, father of Defendants 2 to 4 threatened to interfere with the Plaintiffs' right in respect of the Sevapalis they were performing belonging to Jayasinghghar Bedha. As the temple authorities attached some days of Bedhapali of the

Plaintiffs, they filed the suit for the aforestated relief.

6. The Defendants No. 1 to 4 contested the suit by filing the written statement denying all averments made in the plaint. They raised the plea of maintainability of the suit for non-joinder of parties, the suit being barred by the provisions of the Jagannath Temple Administration Act, limitation and being hit by principles of res judicata. They also denied the assertion that the Sevapuja was transferable by way of sale or mortgage. The Plaintiffs' claim of purchase of Sabapali relating to Jayasinghghara Bedha was denied.

7. The Defendants have pleaded that neither Jayasingh Panda's branch did become extinct nor Raja Mukunda Dev granted any Sanad in favour of Ananta Panda, the ancestor of the Plaintiff. It is further pleaded that in 1926 or 1930, the Plaintiffs were not performing 8 Pali 9 Biswas or 103 days as alleged nor have they acquired another 27 days of subsequent to the alleged record. The dispute between the Pandas and its reference to arbitration was also denied. The Defendants' positive case was that they are successors in interest of Jayasinghghar and were performing entire 90 days of Pali belonging to Jayasinghghar Bedha, which their ancestors Chhakadi alias Ganesh Panda was performing. In addition, they also claimed to be enjoying the Sevapali out of Pandaghara Bedha. The Defendants, therefore, prayed to dismiss the suit.

8. The minor Defendants filed written statement almost in the same line as that of the contesting Defendants. Some of the Defendants were set ex parte.

9. The learned trial court came to the conclusion that the Sanads Exts. 14 and 16 are genuine and genealogies given by the Plaintiffs are correct, in other words, the Defendants' case that they are the descendants of Jayasinghghar Bedha was not accepted by the learned trial court. It is further held that in 1809, Jayasinghghar Bedha had no heirs and his branch became extinct and ancestors of the Plaintiffs were allowed by the then Raja to perform 6 days of Sevapali.

Learned trial court further held that the Seva Pali in the temple of Bimala Thakurani is transferable. It is also held that the Plaintiffs have 59 days of Sevapali, which is to be increased according to the number of days in a year in Jayasingh Bedha. Thus, the learned trial court decreed the suit of the Plaintiff declaring their right over 131 days of Sevapali in the temple of Bimala Thakurani, as per the judgment and decree dated 8.9.1978.

10. Defendants 2, 3 and 4 preferred an appeal bearing Title Appeal No. 99 of 1978. Learned Addl. District Judge, Puri vide his order dated 15.07.1979 remanded the entire suit to the trial court after framing the additional issue regarding custom of transferability of Sevapali.

11. The said order was challenged by the Plaintiff before this Court in Appeal bearing Misc. Appeal No. 40 of 1979. This Court, as per its order dated 14.01.1981 remanded the suit to the trial court to decide the additional issue and further directed that the appeal be kept pending till the additional issue is

decided by the learned trial court. Accordingly, the learned trial court framed the additional issue and allowed the parties to lead evidence on such issue.

12. The learned trial court after remand having carefully gone through the evidence led and taking into considerations the various instances of transfer of Sevapali in the temple of Goddess Bimala and also Lord Jagannath by way of sale or mortgage for consideration, held that there was prevailing practice and custom of transfer of Sevapalli in the temple of Goddess Bimala for consideration and such practice was existing since long.

13. Upon consideration of such findings on the additional issue, the learned Ist Appellate Court after hearing the parties, dismissed the Appeal and confirmed all the findings recorded by the learned trial court vide his judgment and decree dated 12.02.1982. Such judgment and decree has been challenged by the Defendants 2, 3 and 4 before this Court in this Second Appeal.

14. During the pendency of the Second Appeal, it was contended before this Court that Defendant No. 9 (Ka), who was Respondent No. 16 in the appeal, died during the pendency of the same. It was further contended that since the legal representatives have not been substituted, the Appeal abated against him and the whole appeal also abated. This Court vide the judgment dated 12.03.1993 dismissed the Second Appeal as the same had abated in its entirety. The said judgment was challenged before the Hon"ble Supreme Court of India in Civil Appeal No. 16831 of 1996. The Hon"ble Supreme Court vide order dated 02.12.1996, disposed of the Civil Appeal with the observation that so far as the original Defendant No. 9 is concerned, the decree will be taken as final and will be subject to the statement made by the learned Counsel for the Appellants and accordingly this Court's judgment dated 12.03.1993 was set aside. The Hon"ble Supreme Court thereafter remanded the Second Appeal for disposal.

15. In course of hearing of the appeal, learned Counsel for the Appellant submitted that the finding that the Sevapallis are transferable is incorrect and illegal. Secondly, it is submitted that the Record of Rights which has been prepared in pursuance of the provisions of Jagannath Temple Administration Act, 1952, cannot be interfered with by the Civil Court and since the Chief Administrator of Jagannath Temple has not been made a party to the suit, the judgment rendered by the learned court of original jurisdiction and first appellate jurisdiction are nullity. Therefore, the learned Counsel for the Appellants prayed that the appeal be allowed and the judgment and decree passed by the courts below be set aside.

16. Learned Counsel appearing for the Respondents, on the other hand, submitted that since there has been concurrent finding of facts, this Court has no reason to interfere with the same. Further, the learned Counsel contended that there was a special custom of transfer of Sevapali of Goddess Bimala for pecuniary considerations and hence, the transfers are valid and the Plaintiff is entitled to the reliefs claimed. It is also contended that the Plaintiff never

assailed the correctness of the Record of Rights. They have only prayed for declaration of a right to perform Sevapalis for 131 days. Hence, the bar created under the Shri Jagannath Temple Act, 1955 read with the Puri Shri Jagannath Temple (Administration) Act, 1952 is not applicable to this case. The learned Counsel submitted that since the dispute was initially referred to before the Temple Administrator of Shri Jagannath Temple and the Administrator himself advised the parties to approach the Civil Court, the Civil Suit is maintainable. It is further argued that the Administrator himself has referred this case to the Civil Court. He is not a necessary party nor any relief has been claimed against him. Thus, the learned Counsel for the Respondents submitted that the appeal is without any merit and the same be dismissed.

17. The most important question in this case is, whether there was a valid custom of transferring Sevapalis of Goddess Bimala amongst the Sebayats for pecuniary considerations. Before holding that there was a custom, the Court must be satisfied about the four requirements; (i) it must be immemorial; (ii) it must be reasonable, (iii) it must have continued without interruption since its origin (iv) it must be certain in respect of its nature in general as well as in respect of the locality, where it is alleged to obtain and the persons whom it is alleged to effect. Additionally, such custom should not offend public policy.

18. Admittedly, none of the statutes prohibits such alienations. However, learned Counsel for the Appellants relied upon the reported cases of Kali Kinkor Ganguly Vs. Panna Banerjee and Others, ; Nemai Chakrabarty Vs. Banshidhar Chakravarty and Others, Biswanath Chowdhury and Ors. v. Shyam Sundar Chowdhury and after him Narayan Chowdhury and Ors. 75 (1993) C.L.T. 637 and Sri Jagannath Temple Managing Committee and Another Vs. Narayan Mohapatra, and argued that the Sebait rights cannot be transferred. Learned Counsel for the Respondents, on the other hand contended that such rules have certain exceptions as indicated in Kali Kinkor Ganguly's case (supra).

Whenever a religious institution is founded, the founder becomes the Sebait of the Deity and the Sebaitship vests in him until the same is disposed of by any arrangement made by the founder by which a different mode of devolution of the said right is possible. If the sebatiship remains undisposed of, it is heritable like any other property and descends to his heirs and successors in due course. The right of appointing shebait or directing a different mode of devolution of the sebatiship is limited to founder only and is not available to be exercised either by the sebaits or their successors. In this case, the Puri Gajapati has founded the temple and has created the sebaity rights and obligations. Normally, the arrangement made by the Gajapati shall follow, but it appears that in recent times, the Hindu Law of religious endowment has recognised certain exceptions to the same. In order words, it has been recognised that in certain circumstances, sebaity rights can be transferred. The Hon"ble Supreme Court in Kali Kinkor Ganguly's case (supra) has relied upon the Tagore Law Lectures delivered by Dr. B.K. Mukherjea, which is published by the Hindu Law of Religious

and Charitable Trusts First Edition. The Supreme Court took note of the fact that although sebaity right is heritable like any other property, it lacks the other incident of proprietary right viz. capacity of being freely transferred by the person in whom it is vested. The reason is that the personal proprietary interest, which the sebaity has got is ancillary to and inseparable from his duties as a ministrant of the deity, and a manager of its temporalities. As the personal interest cannot be detached from the duties the transfer of sebaityship would mean a delegation of the duties of the transferor which would not only be contrary to the express intentions of the founder but would contravene the policy of law. A transfer of sebaityship or for the matter of that of any religious office has nowhere been countenanced by Hindu Lawyers.

19. The Supreme Court further observed at paragraph 17 at page No. 1935 that the rule against alienation of sebaity right has been relaxed by reason of certain special circumstances. These are classified by Dr. B.K. Mukherjea as follows:

The first case is where transfer is not for any pecuniary benefit and the transferee is the next heir of the transferor or stands in the line of succession of sebaitys and suffers from no disqualification regarding the performance of the duties. Second, when the transfer is made in the interests of the deity itself and to meet some pressing necessity. Third, when a valid custom is proved sanctioning alienation of sebaity right within a limited circle of purchasers who are actual and potential sebaitys of the deity or otherwise connected with the family.

The ratio decided in this case has been relied upon by the division Bench of this Court in the case of Biswanath Chowdhury and Ors. v. Shyam Sundar Chowdhury and after him Narayan Chowdhury and Ors. (supra).

20. The learned Addl. Munsif on remand has come to a finding that there was prevailing practice and custom of transfer of Sevapalis in the temple of Goddess Bimala and such practice was existing since long. The findings do not reveal that such custom is prevalent from time immemorial. There is also no clear cut finding that such custom is being followed continuously since its inception. However, such custom appears to be certain with regard to the persons who can sell and purchase such Sevapalis.

21. The Division Bench of this Court in Biswanath Chowdhury's case (supra) has held that the scope of this exception is limited in the sense that the custom of alienation of Sebaity right should be proved to be reasonable and not opposed to public policy. There are, however, authorities which have taken the view that the alienation of Sebaity right for consideration amounts to traffic of religious office, and therefore, against the public policy and that cannot be sustained even several such instances are proved. The Division Bench of this Court in an earlier decision in Bairagi Das v. Sri Dandas Mohapurus and Ors. 31(1965) C.L.T. 533 also expressed similar view, which has been quoted with approval by the Division Bench in Biswanath Chowdhury's case.

22. Having given anxious thought to the facts of the case, this Court is of the opinion that there is no material on record to come to a conclusion that the custom of alienation of Sebayati right amongst the Sebayats for pecuniary consideration is continuous and uninterrupted from time immemorial though there are several instances of such transfers between the Sevayats.

23. Sebayati rights are in fact obligations and duties. Sebayats are given the duty of performing Sevapuja, in return they are given certain benefits like share in the offerings and Bhoga. The performance of Sevapuja is an obligation, whereas the right to share in the offering is the right of the Sebait. The obligations and duties are sacrosanct in the sense that they are given such duties by the founder of the temple because of the Sevayat's special means of knowledge or training or expertise and belonging to a particular community. Thus, any transfer of Sevayat rights is opposed to public policy and that cannot be accepted by the Court. However, transfer of Sebait rights through Sanad issued by the Raja of Puri is not against such public policy. Those transfers are valid transfers. To that extent, the findings of the learned Addl. Munisif and the judgment of the appellate court are incorrect.

24. Sri Bijan Ray, learned Senior Advocate has placed emphasis on the contention that the Civil Court has no jurisdiction to entertain a suit of this nature. First it is contended by quoting the case of Sri Lachu Das and Ors. v. Sri Jagannath Temple Managing Committee, Puri 34 (1968) C.L.T. 580 that the Record of Rights prepared under the Jagannath Temple Act and the Puri Sri Jagannath Temple (Administration) Act, 1952 cannot be questioned in any Civil court. However, it is seen that the Petitioner has not challenged the preparation of Record of Rights. Rather, as dispute arose between the Sebaites regarding Sebayatis, the matter was referred to the Administrator of the Puri Temple who directed them to approach the Civil Court. In this background, the case has to be examined.

25. Section 9 of the Code of Civil Procedure, 1908 (hereinafter referred to as "Code") provides that the Courts shall, subject to the provisions therein contained in the Code, have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In Explanation I, it has been provided that a suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies. Explanation II provides that for the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place. This provision was taken note of by the Full Bench in Mangulu Jal and Ors. v. Bhagaban Rai and Ors. 41 (1975) C.L.T. 526 (F.B.). The Full Bench of this Court has held that the ouster of jurisdiction of the Civil Court is not readily inferable. The jurisdiction of the Civil Court to decide an issue is excluded only when it is barred either expressly or by necessary implications by virtue of provisions of a

statute.

26. In this view of the settled law, it is necessary to examine the statute governing administration of Sri Jagannath Temple to decide whether such statutes bar the jurisdiction of the Civil Court to entertain a suit of this nature. The Puri Shri Jagannath Temple (Administration) Act, 1952 (hereinafter referred to as the "Act of 1952") has been enacted to provide for the administration of Puri Shri Jagannath Temple, preventing mismanagement of the temple and its endowments by consolidation of the rights and duties of Sevaks, Pujaris and such other persons connected with the Seva Puja and management thereof. Section 3 of the Act provides for appointment of Special Officer. Under Sub-section (1) it is provided that the State Government may, by notification, appoint a Special Officer with prescribed qualifications and professing the Hindu religion for the preparation of a record comprised in such parts and containing such forms as may be prescribed consolidating the rights and duties of the different Sevaks and Pujaris and such other persons connected with the Seva, Puja or management of the Temple and its endowments and may appoint one or more officers with prescribed qualifications to assist him for the purpose. Section 4 provides for powers of the Special Officer. Section 5 provides for publication of record of rights. Section 6 provides for hearing of objections of any person aggrieved by any entry in the record or a part thereof. Under Sub-section (1) of Section 6, 1952 Act further provides that any such aggrieved person may within the period prescribed prefer objections before the District Judge exercising jurisdiction in the district of Puri.

27. Shri Jagannath Temple Act, 1955 was enacted to provide for better administration and governance of Shri Jagannath Temple at Puri and its endowments. Section 3 of the 1955 Act provides that the Puri Shri Jagannath Temple (Administration) Act, 1952 shall be deemed to be a part of the 1955 Act and all or any of the powers and the functions of the State Government under the said Act shall be exercisable by the Committee under this Act from such date or dates as the State Government may by notification direct. The Committee has been defined at Section 4(1)(a). It means, the Shri Jagannath Temple Managing Committee constituted under the 1955 Act. The Act has provided for the powers and duties of the Committee as well as its constituent etc. Section 15-B provides for revision of record of rights and appeal against order for revision. Sub-section (1) provides that the Administrator may on an application made in that behalf by any Sevak, other than the Raja of Puri, and after making an enquiry in the prescribed manner, make an order effecting any change in any entry made in the record-of rights on all or any of the following grounds, namely: (a) that such change is necessary in view of any new materials which have come to notice; (b) that any entry therein bears no relationship to the existing facts, or (c) that any such entry is incomplete or incorrect; provided that no order under this Sub-section shall be made without giving the parties concerned a reasonable opportunity of being heard.

Sub-section (2) of Section 15-B provides that any person aggrieved by an order Sub-section (1) may, within thirty days from the date of communication of the order to him, prefer an appeal before the State Government and thereupon the state Government may, after making such enquiry as may be necessary and after giving the parties concerned an opportunity of being heard, make such order as they deem fit. Sub-section (3) provides that no order under Sub-section (1) or under Sub-section (2) shall debar any person aggrieved thereby from establishing his right, if any, in a Court of competent jurisdiction but no court shall have power to stay the operation of the said order pending the final disposal of the proceedings before such court or of any appeal or application arising therefrom or in relation thereto.

28. Thus, it is clear from the aforesaid provisions that the Record of Rights prepared by the Special Officer attains finality and it can only be challenged before the District Judge exercising jurisdiction with respect to Puri district. The Record of Rights can be revised by the Administration u/s 15-B, provided either of the three points is satisfied. Sub-section (3) very clearly provides that no order made under Sub-section (1) or Sub-section (2) shall debar any person aggrieved thereby from establishing his right, if any, in a court of competent jurisdiction. Thus, it is very clear that even orders passed by the Administrator, which is appealable before the State "Government can be challenged in any court of competent jurisdiction. However, this case does not relate to revision of the Record of Rights. Rather, this is a case where there are some disputes between the Sebaitis with respect to Shebapalis, for which a case was initiated before the administrator of the Lord Jagannath Temple. The entire case record has been exhibited as Ext.23. It was registered as Misc. Case No. 27 of 1968. Order dated 24.09.1970 passed in that Misc. Case is quoted below for proper appreciation:

This is a dispute on account of some days of Seva in the Bimala Devi Temple of Shri Jagannath Temple, Puri. The petition was filed by Sri Bhubani Panda against Basudev Panda and others.

Both the parties have adduced evidence both oral and documentary. The evidences have been gone through. I am convinced that the dispute is purely Civil in nature and their relative rights should be determined through a civil court. The parties are therefore advised to approach civil court. Pending decision of the civil court the Seva on the disputed dates in the Bimala Devi Temple is hereby attached and the Temple Commander is directed to arrange the Seva through a third person on the disputed dates and after giving the usual share out of the income of these dates to the third party the balance will be deposited in the Temple fund till either the parties produce decision of the civil court regarding their relative rights.

29. Thus, it is clear from the discussion in the preceding paragraphs that the Civil Courts do not lack jurisdiction to decide any dispute regarding the sebaite rights. In fact, the Administrator has advised the parties to approach this Civil Court. This Court is in opinion that the Civil Court has jurisdiction to decide the case.

30. Learned Counsel for the Appellants has also contended that the suit is barred for non-joinder of necessary parties. It is contended that the Administrator of the Puri Jagannath Temple is a necessary party. However, it is seen that the Plaintiffs have not claimed any relief against the Administrator of the Jagannath Temple. Secondly, the Administrator discharging a quashi-judicial function has advised the parties to approach the Civil Court for appropriate decision regarding the disputed facts. He also made an interim arrangement of the disputed Sevapalis, which is to continue till either of the parties produce the decision of the Civil Court regarding their relevant rights. So any order passed by the Civil Court, who has jurisdiction to decide the suit, shall have a binding effect of the Administrator of Shri Jagannath Temple, Puri. Therefore, the suit is not bad for non-joinder of necessary parties.

31. The Appellants have not challenged the factual and concurrent findings that the Jaisinghghara became extinct. There is also no reason to differ with that concurrent finding of facts. The Appellants also do not dispute in the Second Appeal that as per the compromise in O.S. No. 427 of 1932, six days of Sevapalis were transferred to the Plaintiffs' ancestors. It is also the concurrent findings of facts that as per Exts. 13 and 14, the Sanad, issued by the Raja of Puri, twelve days of Sevapalis were transferred to the ancestors of the Plaintiffs. Similarly as per Ext. 16, the Sanad issued by the Raja, six days of Sevapali to Jaisinghghar is transferred in favour of the Plaintiffs' ancestors. The sum total of such valid transfers of Sevapalis through Sanad is twenty-four days. The plaintiffs claim that they have right to perform 48 days of Sevapalis which they have inherited from the ancestors. Thus, they have right to perform Sevapalis for 72 days. To that extent, the judgment and decree passed by the learned trial court and confirmed by the learned first Appellate Court are modified.

Hence, the appeal is allowed in part but without cost.