(1963) 01 OHC CK 0009

In the Orissa High Court

Case No : Second Appeal No. 305 of 1960

Lokenath Badu and Another APPELLANT

Vs

Batakrishna Praharaj RESPONDENT

Date of Decision : 02-01-1963

Acts Referred:

Citation : AIR 1963 Ori 115 : (1963) 29 CLT 127

Hon'ble Judges : R.L. Narasimham, C.J

Bench : Single Bench

Advocate : B.K. Pal, for the Appellant; R.C. Misra and S.C. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Narasimham, C.J.—This is an appeal from the appellate judgment of the Subordinate Judge of Puri modifying the judgment and decree passed in favour of the appellants by the Munsif of Khurda.

2. The dispute is between some of the Badu sebaks (appellant) of the well known Temple of Sri Lingaraj of Bhubaneswar on the one hand and the Board of Trustees of the Temple (respondents) appointed by the Commissioner of Hindu Religious Endowments, on the other, as regards their respective rights to appropriate the offerings made at the Temple by pilgrims. There was a previous dispute (O. S. No. 84 of 1949) which was compromised on 23-1-1951 and the terms of the compromise were incorporated in the decree (Ex. 1). In that litigation the trustees of the temple were (1) Shri Pareswar Mohanty, a senior Advocate of Cuttack Bar (since dead) (2) Shri Bichitrananda Das, and (3) Shri Satya Priya Mohanty. They and the Badus (appellants) joined in the compromise petition, but subsequently difference arose regarding the interpretation of some of its terms and this resulted in the present litigation. I specially refer to the fact that two Senior Advocates of Cuttack joined in the compromise petition, mainly in order to emphasise that when they did so, they may be presumed to have been aware of the leading decisions regarding the respective rights of the Deities

and Sebaks in public temples to appropriate the offerings made by the pilgrims.

3. A Nepali gentleman visited the Shrine on the 14th March 1954 and offered a silver Trishul (weighing about 50 Tolas) and a pair of silk cloths for Lord Lingaraj and the Shakti attached to the Lingam and four sarees for the Goddess Parvati located in another shrine within the temple. The plaintiffs being the present trustees claimed that by virtue of the previous compromise the silver Trishul and the silk Sarees all belonged to the Temple and that the Badu Sebaks had no right to the same. The defendants however contended that in accordance with the terms of the compromise they were entitled to appropriate all these articles and that they did not belong to the temple. The trial Court held that the pair of cloths and the silver Trishul offered at the shrine of Lord Lingaraj should be equally appropriated between the plaintiffs and defendants. As regards the silk sarees presented to Goddess Parvati whose idol is located in a separate subsidiary shrine inside the main temple, the trial Court held that the plaintiffs had no claim to them whatsoever as the compromise decree dealt only with the offerings made at the main temple of Lord Lingaraj and not with the offerings made at the subsidiary shrine inside the main Temple. The lower appellate Court however held that the plaintiffs alone were entitled to the silver Trishul; but in other respects, he confirmed the judgment and decree of the trial Court.

4. The Badu Sevaks filed this Second appeal challenging the correctness of the decision of the lower appellate Court and the trustees also have filed a cross-objection claiming that the sarees offered at the shrine of Goddess Parvati should also be divided half and half between the parties.

5. The main question for consideration therefore is whether in accordance with the terms of the compromise petition the Silver Trishul offered at the shrine of Lord Lingaraj belongs exclusively to the Temple or else whether the Temple authorities and the Ba,ru sebaks are both entitled to share the same half and half.

The answer to this question depends on a construction of paragraphs 4, 6, 7 and 10 of the compromise petition which are quoted below:

"Para 4. That in order to ensure solid and substantial income to the Deity Lingaraj Maha-prabhu and in order to avoid future loss of income the Trustees have proposed to fix rates for different kind of offerings and to ensure deposit of presents in the temple fund, they are to issue tickets to pilgrims for offerings before a pilgrim goes to Darshan; and further to enclose the Asthena by railings so that no Palia Badu should appropriate the bheta or offerings made at the alter for offerings, that the collections so made shall first be deposited in the temple office and divided half and half between the Badu Sevaka and trustees of the Temple as provided below:

Para 6. That the plaintiffs and the defendants, after due consideration of all the circumstances have come to agree to the terms as stated below;

(a) Each pilgrim, for offering flower, bel leaves and water to the Deity shall pay

Rs. 0-1-3

(b) Each pilgrim for Abhishek (bathing the deity) shall pay Rs. 1-4-0

(c) Each pilgrim for offering Panchamrut, cocoanut and other fruits together with bathing shall pay Rs. 2-8-0

(d) Each pilgrim for Panchopachar Puja shall pay Rs. 2-8-0

(e) Each Pilgrim for Shodasopachar Puja shall pay Rs. 5-0-0

(f) Each pilgrim, for bathing the deity with Ganges water shall pay Rs. 1-4-0

(g) For presents made to the Deity in cash or kind gold or silver and other metals and presents of cotton and silk clothing which are placed at the Sakti by pilgrim and worshipped should be dealt with in the manner stated below.

Para 7. All the above income will first be credited entirely to the temple account. At the end of each month the Badu Sevaks will get half and the remaining half will remain with the trustees on behalf of the Deity. Out of the fruits offered to the Deity by the pilgrims, half is to come to the Temple and the other half will go to the Panda of the pilgrim.

Para 10: That the presents of gold and silver ornaments and gold coins, plates, vessels etc. required for the sevapuja and bhog of the temple should be entirely credited to the temple account as before in which the plaintiffs have no claim."

6. It will be noticed that though paragraph 4 states in general way that all collections including the offerings made inside the shrine and the prices of tickets should first be deposited in the Temple office and divided half and half between the Badus Sebaks and the trustees of the Temple, it further says that this should be done as "provided below". Paras. 6, 7 and 10 should be taken as "containing detailed provisions as to how this should be done. In paragraph 6 Clauses (a) to (f) deal with the prices of tickets issued to pilgrims. There is no dispute that these should be credited to the temple account as provided in para 7. Every month half the income should be appropriated to the temple and the other half should go to the Badu sevaks. As regards the presents in cash or kind, in gold or silver or other metals, and as regards presents of cloth cotton or silk, placed on the Sakti Clause (g) of paragraph 6 says that they should be dealt with ''in the manner stated below''. But paragraph 7 does not expressly say as to how the presents of cash and gold or silver or other metal should be divided between the rival claimants. But paragraph 10 expressly deals with this subject and says that presents of gold and silver ornaments, gold coins, plates etc. required for the seva puja and bhog of the Temple should entirely credited to the temple accounts as before and the sebaks will have no claim to the same. As the sarees placed on the Shakti are not dealt with in paragraph 10 it necessarily follows that they will come, within the general provisions contained in paragraph 7 and should be divided half and half between the rival claimants. As regards the Trishul, the argument on behalf of the trustees is that it is a silver "ornament" of the Deity

and would therefore come within para 10. On behalf of the Badu Sebaks, however, it was contended that though Trishul may be a weapon of Lord Shiva it cannot be considered to be an ornament and that consequently it would come within the general provisions contained in paragraph 7 and not within the special provisions contained in paragraph 10.

7. For the purpose of disposing of this appeal it is unnecessary to decide whether the words "required for the Seva Puja and Bhog of the Temple" in Para. 10 apply only to plates, vessels etc. or else whether they also apply to gold and silver ornaments and gold coins. The lower appellate Court has held that the words apply only to plates, vessels etc. and that all gold and silver ornaments and gold coins, whether required for the Seva Puja and bhog of the temple or not, would come within the scope of that paragraph. Even if this view be taken as correct, the main difficulty still arises as to whether the Silver Trishul placed on the Linga of Lord Shiva can be said to be an ornament within the meaning of paragraph 10.

8. Mr. Pal for the appellants urged that a distinction should be made between ornaments (Abharanam) of Lord Siva on the one hand, and his weapon (Ayudhas) on the other, and though a silver Trishul may be Lord''s Ayudha, it cannot be described as the "Abharanam" or ornaments. There is a real distinction between a weapon and an "ornament" as applied to human beings. But in the case of deities like Lord Shiva or Lord Vishnu, some of the weapons have become such necessary adjuncts of those deities when they are contemplated in human form, that they become their ornaments also. Thus, the very description of Lord Shiva as "Sulin'', ''Sulapani'' or ''Sulabhrut'' shows that Trishul is so intimately associated with Him as to become a necessary adjunct in the same way as Discus or Chakra is inseparably associated with Lord Vishnu. In fact, it is difficult to contemplate either Lord Shiva or Lord Vishnu without these weapons. In the Oxford Dictionary, also ''ornament'' has been explained as meaning ''any adjunct or accessory (primarily for use, but not excluding decoration or embellishment); accessories or furnishings of the Church and its worship. It is further stated that in ecclesiastical law the term ''ornament'' is not confined as by modern uses, to articles of decoration or embellishment, but it is used in the larger sense of the word ornamentum. In view of this wide definition given to the expression ''ornament'' and also in view of the conception of Lord Siva in human form as described in the Hindu mythology the Trishul of Lord Shiva may also be considered as his ornament. It is well known in Hindu mythology that the wearing apparel and ornaments of Lord Shiva are of bizarre type, his cloth consisting of the elephant''s skin, his ornaments being a snake coiled round the body, a garland consisting of human skulls, and ashes from the cremation ground smeared all over his body as has been aptly described as "Viruddha Vesha Abharana" in Bharavi''s Kitatharjunaym (18 Sarga, in sloka 32 and 33). The two Senior Advocates who signed the compromise petition were surely aware of the nature of ornaments associated with Lord Shiva in Hindu Mythology and hence when they referred to ornaments in paragraph 10 of that compromise petition they could not possibly have thought of the snake or the garland of skulls or

ashes from the cremation ground. They must have used the word in its wider sense as including all the adjuncts associated with Lord Shiva whenever one contemplates Him in human form.

9. It is not difficult to understand why paragraph 10 was put in the terms of the compromise by the two Advocates. In the well known decision of the Calcutta High Court dealing with Deoghar Temple, reported in Girijanund Datta Jha v. Sailajanund Datta Jha ILR Cal 645, the learned Judges pointed out that

"where an idol is an ancient one permanently established for public worship and the offerings made to it are more or less of a permanent character being coins and other metallic articles, in the absence of any custom or express declaration by the donor to the contrary, the offerings are to be taken to be intended to contribute to the maintenance of the shrine with all its rites, ceremonies and charities, and not to become the personal property of the priests."

This decision was based on some observations in Manohar Ganesh v. Lakhmiram Govindram ILR 12 Bom 247. It is reasonable to assume that the principles laid down in the aforesaid Calcutta decision were incorporated in paragraph 10 of the terms of compromise by those two senior Advocates -- the intention being that all gifts of silver and gold ornaments made at the shrine of Lord Lingaraj should be credited to the Temple funds.

10. The cross-objection of the trustees regarding their right to claim the silk sarees offered to the Goddess Parvati must be rejected. The shrine of Goddess Parvati is a separate shrine as distinct from the shrine in which the main deity Lord Jagannath and his Sakti are located. The terms of the compromise seem to apply only to the offerings made at the main shrine of Lord Lingaraj. Lingaraj Mahapravu is expressly described in paragraph 4 of the compromise petition and "Sakti" is also specially mentioned in Clause (g) of paragraph 6. There is no reference anywhere in the compromise petition to the shrine of Goddess Parvati.

11. For these reasons the judgment of the lower appellate Court is maintained and the appeal is dismissed with costs. The cross-objection is also dismissed but without costs.

