

(1958) 01 OHC CK 0007
In the Orissa High Court
Case No : First Appeal No. 12 of 1952

Narendra Dikshit and Others

APPELLANT

Vs

Ch. Shyam Sundar Das and Others

RESPONDENT

Date of Decision : 07-01-1958

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Orissa Hindu Religious Endowments Act, 1939 — Section 64(2)

Citation : (1958) 24 CLT 301

Hon'ble Judges : Rao, J

Bench : Single Bench

Advocate : N. Mukhedee and S.K. Ghosh, for the Appellant; H. Mohapatra and S. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

Rao, J.—This appeal is by the Plaintiffs against the judgment and

decree of the Second Additional Subordinate Judge, Cut tack in Title Suit No. 3/93 of 1951/1949. The suit is one u/s 64(2) of the Orissa Hindu Religious Endowments Act praying for a declaration that the order dated 19.7.19407 passed by the Commissioner of the Hindu Religions Endowments who is Defendant No. 5 declaring the temple of Shri Lakshmi Nrusighanath Thakur at Purbakachha and the Thakur's properties as public and demanding for contribution, is illegal and liable to be set aside.

2. The Plaintiffs' case is that the institution is not a temple as defined in the Orissa Hindu religious Endowments Act, 1939 and to at it is not used as public temple nor is it dedicated to the benefit of the Hindu Community or used as of right by the Hindu public or any section thereof as a place of religious worship that the deity is a private deity established exclusively for Dikhit family of the Plaintiffs and the pro-forma Defendants by the ancestors of the Plaintiffs and the properties acquired in the name of the Thakur are their private properties out of which the up-keep and seba-puja of the idol are managed and performed; that

the Plaintiffs and the pro-forma Defendants are the hereditary marfatdars of Shri Lakshmi Nrusinghanath Thakur and have succeeded to the office of the sebayat marfatdars by hereditary right; and that they have been continuing in possession of the Thakur's property from generation to generation and performing the daily and periodical worships and festivals of the deity without any mismanagement.

3. Defendants 1 to 4 and 4a are the trustees appointed by the Endowments Commissioner and Defendant 8 was subsequently added at his own request on behalf of the public under Order 1, Rule 8 of the CPC Code. Defendant 5 is the Commissioner of the Hindu Religious endowments. The suit is contested by Defendants 1, 3, 4a, 5 and 8. Their allegations are that the Plaintiffs and the proforma Defendants are mere Sebaks of the deity and not marfatdars; that the temple of Sri Lakshmi Nrusinghanath is a public temple as defined in the Hindu Religion Endowments Act and not only the members of the public in the vicinity but also devotees from distant parts of Orissa come to the temple for Darsan and to offer gifts of ornaments and other movables that the temple is an ancient one and the deity was installed by Shri Purusottam Deb, a former king of Orissa who also endowed the properties for the seba-puja of the Thakur; and that it is false that the properties were acquired by the Plaintiffs' ancestors and the temple constructed at their cost. They also denied that the management of the deity's properties was all along with the Plaintiff's family and alleged that the temple was managed for about 20 years by one ascetic named Bhagabat Das Babaji and for some time by a committee of villagers; that the properties of the deity were partly purchased from the original endowment fund and partly dedicated by the public including the Choudhuris of Bhingarपुर and that the deity had landed properties to the extent of 16 Batis, 16 Acres and 16 Gunths, the bulk of which has been illegally alienated away by the Sebaks and at present only a few acres of land are left. They also alleged that the deity was worshipped as a matter of right by the public and taken out during Dol and other festivals to take Bhog at the houses of the villagers; and that the temple of the Thakur was repaired and Janijatras performed with the help of contribution from the members of the public.

4. Several issues were framed, but the main issue argued before me is issue No. 7, which is, "In the institution a, public and non-excepted temple 1" The Plaintiffs examined six witnesses in support of their case and filed Exts. 1 to 20 (a). The Defendants examined eight witnesses and filed Exts. A to. N (4).

5. The learned Second Additional Subordinate Judge came to the conclusion that the institution was a public temple after a discussion of the evidence adduced by both parties.

6. Mr. S.K. Ghosh, the learned Counsel appearing on behalf of the Appellants contends that the judgment of the learned Subordinate Judge is wrong and that he has not properly appreciated the evidence adduced on behalf of the Plaintiffs. He contends that the learned Subordinate Judge (Sic ought) to have held that the Plaintiffs proved that the institution was a private temple.

7. The learned Counsel took me through the evidence of the Plaintiffs' witnesses as also the documents filed by them. At the outset it may be noted that though there are 14 Plaintiffs in the case, none of the Plaintiffs went to the witness box to give evidence in support of their case. Plaintiff No. 1 is admittedly the eldest member in the family and he also made a statement before the Inspector of Endowments (D.W. 7), but he did not examine himself in the case. The son of Plaintiff No. 1 is P.W. 1. He has no knowledge whatsoever about the origin of the endowment. He stated that Plaintiff No. 15 Shri Lakshmi Nrusinghanath is their family deity; that they have their residential houses within the compound of the temple of the said deity that the person,; who were in charge of the seba-puja for the time being, according to the turns, remained in these quarters; and that the Plaintiffs and the pro-forma Defendants are the marfatdars of the Thakur and seba-puja is carried on by different marfatdars by rotation. According to his evidence, there were several Janijatras, such as, Dol festival, Chandan Jatra, Jhulan, Rahas Jatra, Sripanchami etc. Which are performed for the deity and that the marfatdars contribute towards the expenditure in connection with these festivals and Jatras. He also stated that the lands were dedicated to the Thakur by their ancestors, by whom the deity was, installed; that no member of the public ever dedicated any landed property to the Thakur; and that the compound of the Thakur's temple is enclosed with a stone compound wall with one gate at the main entrance. According to him, the public have no right to enter into the temple without obtaining permission from the marfatdars. But in cross-examination he admitted that the temple has a Sinhadwar (Lion's gate) and his evidence is that the Lion's gate of the temple. Is of masonry work and is an arch. He stated that inside the compound of the -If temple there are the Jhulan Mandap, the cow-shed, the temple of Gopeswar Manadeb, the kitchen of the deity, besides the main temple with the Sinhasan, Bhog.mandap and a Mukhasala within; that the Jagnya Mandap is on the other side of the road in front of the Lion's gate; that there is also a tank belonging to the Thakur; and that the Dol Mandap of the Thakur is on the outskirts of the village at a distance of about half a mile from the temple. He admitted that the members of the public were also contributing in cash and kind in ghee when Jagnya was performed; that the Jagnya Mandhap was constructed by one Bhagabat Das Babaji by raising subscriptions; that Radhanath Kar (P.W.4) is one of the Sebak of the deity and is the brother of Plaintiff No. 10; and that P.W.4 wrote a booklet called "Jagnya Mahatmya" Whose printed copy (sic the printed copy of which is Ext. A, in the case. According to his evidence, the Sunia festival of the Thakur is held in the Mukhasala of the temple and Sunia Bheti is deposited on that day on behalf of the zamindar and Lekhan Poja (worship of pen) is performed by the zamindar in the temple on that day. He also admitted that on the occasion of Dol Purnima the Thakur is taken to the houses of the villagers on invitation to take Bhog; that some of the villagers have got their Bedis (small Mandaps) in front of their houses along the road side; that invitations are received by the Thakur for the purpose from- 4 or 5 of the villagers; that the Thakur Is also taken to the village of Padmapur which is two miles off to take Bhog on Dol Purnima; that the temple

land is recorded as Lakhraj Bahel; and, that the Bijesthali of the Thakur is recorded as Nishkar in the Revisional Settlement and in the Current Settlement it has been recorded as Zamindar-diaki Nishkar Anabadi) land given by the zamindar free of rent). He frankly admitted that he could not name a single member of the public who approached any of the Plaintiffs for obtaining permission and for opening the lock of the temple gate for Darsan. He further admitted that Mali Giridhari Rana enjoys some Thakur's land as Jagir for supplying flowers; that Jambo Majhi and others beat drums for the Thakur; that the temple is of pucca structures; and that one Narasingha Sahu of Champati has given a marble slab with his name subscribed on it which has been placed inside the compound of the temple. According to his evidence there is also a committee for the Jagnya Thakur of which Defendant No. 1 is the Secretary and finally he admitted that he and another Plaintiff Kunjaban Kar filed Ext. B, a petition, before the Endowment Commissioner and it bore their signatures. Ext. B is a petition filed on 2.10-46 by the villagers, of whom this witness is one, in which it is categorically stated that they have formed a Board of Trustees and requesting the Commissioner to continue them as the managers. From this evidence of P.W. 1 it is clear that he has no knowledge whatsoever about the origin of the endowment. On the other hand, his evidence supports the defence story of the public -nature of the endowment to some extent. P.W. 2 is an old lady of 75 years. She is examined to state that she went to the temple of Shri Lakshmi Nrusinghanath on being invited by Hari and Radhu, the Sebayats of the Thakur. She stated that she saw some female members of the family of P.W. 1 working in the temple of the Thakur She admitted that the door of the temple was not locked, but kept closed during day time, that her foster son was looking after this case on behalf of the Plaintiffs; and that at the time of the Thakur's Arati in the evening the gate of the temple remains open and the members of the public come to have Darsan. She also admitted that she saw more than 500 persons assembled to witness the Jagnya. Her evidence serves no useful purpose for the Plaintiffs and is also interested. P.W. 3 is a person who ordinarily resides at Choudwar and he states that the deity Shri Lakshmi Nrusinghanath is a private deity and that the members of the public cannot enter into the temple without permission of the members of the Plaintiffs' family. But in cross-examination he admitted that he could not say if any permission was necessary when members of the public went to have Darsan of the Thakur and he said that the deity was private as the Plaintiffs did the seba-puja and arranged Bhog at their own cost. He has no knowledge of the source of money spent for the festivals and Jattras performed in the temple. His evidence also does not advance the Plaintiffs' case. P.W. 4 Radhanath Kar is the author of the printed booklet. In his chief examination he stated that Shri Lakshmi Nrusinghanath is the private deity of the Dikshit family; that he cannot say who originally installed the deity and constructed the temple, but that he heard that their forefathers did it. In cross-examination, It is regrettable, that the Defendants did not confront him with the allegations made by him in the printed booklet which are very relevant for purposes of the suit. The printed booklet Ext. A shows that the temple was

constructed and the deity installed by Shri Purusottam Deb, a former king of Orissa. P.W. 5 Jambeswar Panda stated that Shri Lakshmi Nrusinghanath is the family deity of the Plaintiffs and that he acts as the priest of the Thakur in Janijatras and performs Homa. But he stated in cross-examination that the Thakur Lakshmi Nrusinghanath has got representative idols who go out on the occasion of Dol and such other festivals and that as the Plaintiffs do the seba-puja, he stated that the deity belonged to them. From his evidence we also get that the village Purbakachha was previously known as Purusottampor Sasan. P.W. 6 is Defendant No. 2 in the Case. He is also one of the trustees appointed by the Endowment Commissioner. He stated in his chief examination that the deity 5 Shri Lakshmi Nrusinghanath is the private deity of the Dikhit family and that the members of the said family look after the seba-puja and management of the Thakur's property. But in cross-examination he stated that as the Plaintiffs are doing the seba-puja of the Thakur, he stated that the Thakur belonged to them. He also admitted that he never saw the Plaintiffs refusing permission to anybody. He is also a signatory to the petition Ext. B and he admitted his signature to the same. He also admitted that he was a signatory to the petition Ext. C also. Ext. C is another application like Ext. B to the commissioner of the Hindu Religions Endowments in which he was informed that the villagers constituted some trustees for the management and one of them was named as the managing trustee. On these facts, his evidence therefore is absolutely worthless.

8. The oral evidence thus adduced by the Plaintiffs does not make out the case set up by them. On the other hand, the evidence clearly goes to show that the institution was a public one. From the evidence of the Plaintiffs' witnesses, it is seen that the temple is a masonry work; that it has a Lion's gate; that it is situated outside the village and at a distance from habitable houses and is enclosed with a stone compound wall; that the door of the temple is not locked but kept closed during day time and that in the night only after the work is finished it is locked; Shri Lakshmi Nrusinghanath is the presiding deity of all the villagers; that the Jagnya is performed in the Jagnya Mandap every year; and that the members of the public contribute in cash and kind towards the same. No doubt an attempt is made at the end of the examination of P.W.1 that the Jagnya has nothing to do with the temple, but that cannot be accepted. From the evidence of P.W. 1 it is disclosed that one Bhagabat Das Babaji resided in the temple for about 30 years and constructed the Jagnya Mandap and excavated a tank in front of the temple by raising public subscriptions. From the evidence of P.W. 1, it is also clear that there is a committee for the Jagnya of the Thakur of which Defendant No. 1 is the Secretary; that there are Jagirs given for performance of certain services concerning the temple; that the members of the public take part in Janijatras; that the deity has smaller idols for being taken out in procession; and that the villagers attend the temple on all festive occasions.

9. Coming to the documentary evidence adduced by the Plaintiff this also does not in any way make out the Plaintiffs' case. Exts. 1 to 3 are registered sale deeds executed by the members of the Dikhit family. The recitals show that they

are the Seba-Samarpanpatras. Admittedly the Plaintiffs are the Archikas of the temple. They perform the daily puja. The entire land which they are in possession of is about 23 acres. These documents therefore do not in any way go to show that the temple is a private temple, as in case of public temples also the Sebaks transfer their Sebak rights. Exts. 4, 4a, 4b, 4c and 5 are Khewats and Khatians. Exts. 6 and 6a are some entries in the D. Register. Ext. 9 is a rent receipt in the name of Shri Lakhmi Nrusinghanath and Exts. 10, 12, 13 to 19 are certain Khatians, valuation rolls and other revenue papers. These documents do not in any way make out the Plaintiff's case. They show that the name of the deity is entered as the Owner. The lands are described as Lakhraj Bahel. Some of them show that some of the members of the Dikhit family are marfatdars for some of the lands. The entry of their names as marfatdars in some of the documents does not in any way help to make out a case of private endowment. Ext. 7 is a copy of the decree in Original Suit No. 738 of 1907 dated 4.9.1907 and Ext. 8 is a Nadabi Patra executed by Daitari Dikhit in favour of Kasi Dikhit. These documents also are not of any importance. Ext. 7 shows that the dispute involved in the suit was with regard to the Sebak rights of the Dikhit family and Ext. 8 also deals with the said rights, the other documents, though some of them show the names of the members of the Dikhit family, are quite consistent with their being noted as marfatdars for some of the lands which are entered in the name of the deity. Ext. 19, the khatian of mama Purbakachha clearly shows that the lands are recorded in the name of Shri Lakshmi Nrusinghanath.

10. Mr. Ghosh, the learned Counsel for the Appellants contends that the learned trial Judge is wrong in saying that the alienations are to outsiders. This is not of much importance inasmuch as the alienations which are in evidence are only alienations of the Sebak rights.

11. From this evidence, both oral and documentary, it is clear that the learned trial Judge is right in holding that the Plaintiffs failed to prove their case that the suit institution was a private temple.

12. On the other hand, D.Ws. 2 and 3 stated that the deity in question was a public deity and not a family deity of the Plaintiffs. D.W. 7, the Inspector of Endowments recorded the statement of Plaintiff No. 1 which is Ext. J. in the case. It is stated therein that the members of the public repair the roof of the temple Mandap and the kitchen every year and the extent of the land is given as 16 Batis, 16 Acres and 16 Gunths which nomenclature is consistent with the grant to a public endowment. The learned Counsel for the Appellants contends that Ext. J does not contain the genuine signature of Plaintiff No. 1. No doubt the signature appears to be slightly different in form from the admitted signatures in other documents. But this contention cannot be accepted in the absence of Plaintiff No. 1 coming into the witness box and denying his signature. Mr. H. Mohapatra, the learned Counsel for the contesting Respondents 1 & 3 and some others submits that the very fact that the Bijesthali is recorded in the Current Settlement as Zamindar-diaki Nishkar Anabadi shows that it is a public endowment as also the

lands being recorded as Lakhraj Bahel. Exts. N series show that there are zamindar Jagirs for drummers and supplier of flowers which facts are only consistent with the institution being a public one. The admitted facts that the Dol Mandap is at a distance of about half a mile and the deity is taken in procession to other villages also, according to the learned Counsel, make out the public nature of the endowment, A marble slab will not be allowed to be put up in a private temple by an outsider. There is also another deity Gopeswar Mahadeb installed in the temple. Lekhan puja, as already stated, is performed by the Zamindar on Sunia day. From Ext. 5 it is clear that the Sebaks of the temple are not only the members of the Dikhit family, but also other families. Plaintiff No. 10 himself is not a member of the Dikhit family. For about 30 years, the entire institution as well as the property of the institution was managed by one Bhagabat Das Babaji who started also the Jagnya. The booklet Ext. A gives the history of the institution. According to Ext. A, king Purusottam Deb when he went to the south, brought this image from the south and installed the deity, constructed the temple and established a sasan known as Purosttampur sasan. The learned Counsel for the Appellants contend with some force that the recitals in this document cannot be taken in to account as P.W. 4 was not confronted with the same. No doubt P.W. 1 admitted that P.W. 4 was the author of this booklet when he was examined, but P.W. 4, should have been confronted with the recitals and should have been given an opportunity to explain the said statements. But apart from this document, there is the other document (Ext. D), palm leaf book, which also gives the same history with regard to the endowment. From these documents, it appears trial the beneficiaries under the grant made by Purusottam Deb are not certain individuals but are certain classes of persons.

13. Mr. Ghosh relied, in support of his case, on two decisions-one of the Judicial Committee and the other of the Supreme Court in support of his contention that the suit endowment is a private endowment. In the case of AIR 1940 7 (Privy Council) , it was held by the Judicial Committee:

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. 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. Such an inference if made from the fact of user by the public is hazardous, since it would not in general be consonant with Hindu sentiments or practice that worshippers should be turned away; and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all circumstances desire to discourage popularity.

This decision, in my opinion does not in any way support the case of the Appellants. In this decision of the Judicial Committee, there was evidence that the grant was to an individual or family and the family treated the temple as family property. When there is such an unimpeachable evidence in a case, it is quite clear that no member of the public going into the temple for Darsan Can convert it into a public one. But in the present case there is absolutely no evidence of the grant in favour of individual. In the case of *Deoki Nandan v. Murlidhar and Ors.* AIR 1947 S.C. 133, it Was held by the Supreme Court,

Under the Hindu law, an idol is a juristic person capable of holding property and the properties endowed for the institution vest in it. But it does not follow from this that it is to be regarded as the beneficial owner of the endowment. It is only in an ideal sense that the idol is the owner of the endowed properties and it cannot have any beneficial interest in the endowment,..... The true purpose of a gift of properties to the idol is not to confer any benefit on God, but to acquire spiritual benefit by providing opportunities and facilities for those who desire to worship. When once it is understood that the true beneficiaries of religious endowments are not the idols but the worshippers, and that the purpose of the endowment is the maintenance of that worship for the benefit of the worshippers, the question whether an endowment is private or public presents no difficulty. The cardinal point to be decided is whether it was the intention of the founder that specified individuals are to have the right of worship at the shrine, or the general public or any specified portion thereof. Thus where property is dedicated for the worship of a family idol, it is a private and not a public endowment, as then persons who are entitled to worship at the shrine of the deity can only be the members of the family, and that is an ascertained group of individuals. But where the beneficiaries are not members of a family or a specified individual, then the endowment can only be regarded as public, intended to benefit the general body of worshippers.

This decision also does not in any way support the Appellants' contention. On the other hand, on the evidence in the case it supports the defence case. In the present case before me the lands are recorded as Lakhraj Bahel in the name of the deity. There is no evidence that the grant was made to an individual or to a family. The evidence shows that the beneficiaries are a class of persons who form a general body of worshippers. I am, therefore, of opinion that the learned trial Judge is right in holding that the endowment is a public one and the order of the Commissioner of Hindu Religious Endowments is right.

14. Mr. Ghosh then contended that the hereditary marfatdarship having been established, the endowment should be declared an excepted temple. But that was not the case of the Plaintiffs. They did not pray for this relief in the plaint. Their only prayer was to set aside the order of the Endowment Commissioner on the ground that the suit endowment is a private endowment and on this issue both the parties went to trial. Under these circumstances, I cannot hold that the suit endowment is an excepted temple. But the learned Counsel Mr. S. Mohanty

appearing for the Commissioner undertakes that in the appointment of the Board of trustees at least two persons would be selected from the entire body of Sebaks of the deity. The Sebaks' interest in the management of the endowment will be protected by this undertaking as two of them will always be in the Board of trustees.

15. In the result, the appeal fails and is dismissed with costs.