

(1980) 12 OHC CK 0004

In the Orissa High Court

Case No : Miscellaneous Appeal No. 229 of 1980

Nityananda Muduli and Others

APPELLANT

Vs

Sri Baladev Jew Thakur and Others

RESPONDENT

Date of Decision : 19-12-1980

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145
Orissa Hindu Religious Endowments Act, 1951 — Section 41, 68, 69(1)
Orissa Land Reforms Act, 1960 — Section 36A

Citation : (1981) 51 CLT 224

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : B.H. Mohanty, S.C. Mishra and J.K. Bastia, for the Appellant; R.C. Mishra, N. Mishra, S.C. Samantray and P.N. Mishra, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Das, J.—Plaintiffs are Appellants against the order of the trial Court appointing Defendant No. 2 as receiver of the disputed property when the Plaintiffs prayed for an injunction. Defendants 2 and a are the trustees of Defendant No. 1-the deity. Plaintiffs filed the suit for declaration that the order of the Assistant Commissioner of Endowments u/s 68 of the Orissa Hindu Religious Endowments Act as well as the order u/s 41 of the said Act are invalid and inoperative so far as the Plaintiffs and their property are concerned. Admittedly, different Plaintiffs are Interested in different suit plots and they claim either to be lessees or bhag chasis. Admittedly also the deity (Defendant No. 1) has been declared to be a public deity and Defendant Nos. 2 and 3 have been appointed as trustees. There is also an order of the Assistant Commissioner of Endowments u/s 68 of the Act for taking possession of the entire suit lands.

2. It is contended by the Plaintiffs that they filed several applications u/s 36-A of the Orissa Land Reforms Act and those applications have been allowed. In some cases, appeals were filed and in some cases review applications were filed by

some of the Defendants, but those have been dismissed. Thereafter, another application for review was filed by some of the villagers interested in the endowment and the same has been allowed. The Plaintiffs contend that by the time of the application u/s 68 of the Act, all the cases filed by the Plaintiffs under the O.L.R. Act or under the Orissa Estates Abolition Act had been disposed of and the appeals at the instance of the deity were pending. The Plaintiffs were not made parties in the proceeding u/s 68 of the Orissa Hindu Religious Endowments Act and only Defendant No. 4 the ex-trustee, who was residing in West Bengal was made a party and an ex parte order was passed in that proceeding. The Plaintiffs further contend that no delivery of possession has been given.

3. It is not disputed that the managing trustee of the deity had started a proceeding u/s 145, Code of Criminal Procedure. The Magistrate ordered for attaching the properties. On 21-11-1979, the Magistrate has declared possession of the trustees. It is contended that this was an ex parte order and the Plaintiffs carried Criminal Revision No. 579/79 which has been dismissed because a civil suit was pending. Plaintiffs contend that the ex parte order u/s 41 of the Orissa Hindu Religious Endowments Act is not binding against them and their properties. So also the ex parte order u/s 68 of the Act. They further contend that even if the Court is inclined to appoint a receiver, in that case the Plaintiffs should be appointed as receiver.

4. The trial Court has held that there is scramble for possession and there has already been declaration by the Assistant Endowment Commissioner that this is a public temple and the managing trustees have been appointed. Further, there has been also an order u/s 68 directing the trustees to take possession, and possession of the Defendants has been found in a proceeding u/s 145, Code of Criminal Procedure. There being scramble for possession by both the parties, the trial Court felt it just and convenient to appoint Defendant No. 2 as the receiver and the trial Court has put some restrictions about the management of the affairs by the receiver.

5. On behalf of the Defendants, it is contended that the suit is not maintainable. They contend that the deity is perpetual minor and is a privileged raiyat and this being a religious trust, the suit is not maintainable. It is further contended that according to Section 69(1) of the Orissa Hindu Religious Endowments Act, notice is to be served atleast a month before the hearing in a case either in the civil Court or in the revenue Court. No such notice was served in the cases filed by the Plaintiffs under the Orissa Land Reforms Act or under the Orissa Estates Abolition Act. Therefore, the decision in those proceedings are not valid. In a proceeding u/s 145, Code of Criminal Procedure possession of the Defendants has already been found and therefore the Plaintiffs cannot be said to be in possession of the disputed property.

6. The question whether the proceedings under the O.L.R. Act or the O.E.A. Act are valid or not is to be decided on merits in the suit. It is not disputed that the ex-trustee who lived in West Bengal was the Defendant in all the aforesaid

proceedings. In the proceedings under Sections 41 and 68 of the Orissa Hindu Religious Endowments Act, the ex-trustee was a party. The Plaintiffs have also challenged the order passed u/s 145, Code of Criminal Procedure.

7. Prima facie, the competent authority, namely, the Assistant Commissioner of Endowments "has declared the institution as public u/s 41 of the Orissa Hindu Religious Endowments Act. He has also passed orders u/s 68 of the said Act for recovery of possession. Unless those orders are set aside, they stand good and valid. So also, the order u/s 145, Code of Criminal Procedure prima facie declares possession of the Defendants. The decision u/s 41 of the Orissa Hindu Religious Endowments Act and the order u/s 68 of the Act have been challenged by the Plaintiffs as not binding against them or their properties. Of course, there is no clear prayer for declaration of the title of the Plaintiffs in respect of the suit property. The trial Court has taken into consideration the aforesaid orders which prima facie show that the institution is a public one and the competent authority has passed order for recovery of possession and the Magistrate action u/s 145, Code of Criminal Procedure has also declared possession of the Defendant. In view of the present litigation, the trial Court I has come to the conclusion that there is scramble for possession and It is therefore necessary to appoint a receiver. The Court has to see prima facie what is the position and what would be just and convenient in the facts and circumstances of the case. The trial Court has undoubtedly taken these matters into consideration and has come to the conclusion that it would be just and convenient to appoint a receiver The trial Court while appointing Defendant No. 2 as the receiver has directed that he would raise paddy in the suit lands diligently with care and caution and would render accounts of the yield immediately after the harvest. He has further directed that the receiver would take prior permission of the Court before harvest of the" paddy from the suit lands. In view of the aforesaid circumstances, there is no compelling reason to interfere with the decision of the trial Court for preservation of the properties till the litigation is over. The challenge of the Plaintiffs and the grounds of objection by the I Defendants have to be decided on merits in the suit. In view of the prima facie orders of the Assistant Commissioner of Endowments as well as the Magistrate exercising jurisdiction u/s 145, Code of Criminal Procedure it is meet and proper that Defendant No. 2 should be appointed as the receiver.

8. In the result, the appeal is dismissed. The order of the trial Court appointing Defendant No. 2 as receiver is upheld. The trial Court is directed to dispose of the suit by the end of April, 1981 and would first of all take up the question of maintainability and dispose of the issue. It is admitted by both the parties that the ex-trustee is not a necessary party. As notice has not yet been served on him both the parties agree that in his absence the suit can be disposed of as he is not a necessary party and the trial Court can take up the hearing of the suit without service of notice on the ex-trustee Udaya Chand Mahatab, Defendant No. 4. In the circumstances of the case, parties to bear their respective costs.