

(1973) 04 OHC CK 0038
In the Orissa High Court
Case No : O.J.C. No. 801 of 1970

Radha Mohan Mohapatra and Another APPELLANT
Vs
Commissioner of Endowments and Another RESPONDENT

Date of Decision : 19-04-1973

Acts Referred:

Constitution of India, 1950 — Article 226 , 227
Limitation Act, 1963 — Article 96
Orissa Hindu Religious Endowments Act, 1951 — Section 19, 19(1), 24, 25, 58

Citation : (1973) 39 CLT 796

Hon'ble Judges : N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : S.C. Adhikari, for the Appellant; S. Mohanti and R.S. Parida, for the Respondent

Judgement

B.K. Ray, J.—The two Applicant against whom the Commissioner of the Orissa Hindu Religious Endowments has passed an order directing their eviction in Revision Case No. 9 of 1970 from the land which is the subject-matter of a proceeding? u/s 68 of the Orissa Hindu Religious Endowments Act (Vide O.A. No. 230 of 1966 before the Assistant Commissioner of Endowments) have filed this application under Articles 226 and 227 of the Constitution of India for vacating the order of the Endowment Commissioner. Petitioner No. 1 claims to be in possession of plot No. 194 with an area of 0.81 acre since the date of purchase by his father as marfatdar of Shri Radha Krishna Deb. This purchase is alleged to be in the year 1927. Petitioner No. 2 claims to be in possession of plot No. 509 with an area of 2.53 acres since the date of his purchase in the year 1927. Admittedly, the aforesaid two plots originally belonged to Shri Jagannath Swami installed in village Phasi, District Ganjam. The marfatdars of Shri Jagannath Swami had transferred the aforesaid two plots claiming them to be their ancestral properties being in need of money for their own private purposes. The transferor-marfatdars after effecting the transfers in the year 1927 died. The Addl. Assistant Commissioner of Endowments appointed a trust board in respect

of the institution of Jagannath Swami by order No. 690/582 (G) M., dated 20-2-1965 of which opp. party No. 2 is the managing trustee. Opp. party No. 2 after his appointment as a managing trustee filed an application before the Assistant Commissioner of Endowments u/s 68 of the Orissa Hindu Religious Endowments Act (Vide O.A. No. 230 of 1966) for taking possession of the aforesaid two plots. This application was resisted by the Petitioners. The Assistant Commissioner of Endowments dismissed the application by his order dated 9-1-1970. Against this order of dismissal, opp. party No. 2 preferred revision case No. 9 of 1970 before the Commissioner of Endowments (Opp. party No. 1). This revision case having been allowed by opp. party No. 1, the Petitioners have filed the present application.

2. The opp. parties in two separate counters have denied the Petitioners allegations and claimed dismissal of the writ application.

3. Mr. S.C. Adhikari, learned Counsel for Petitioners contends that the proceeding u/s 68 of the Orissa Hindu Religious Endowments Act, 1951 (hereinafter to be referred to as the 'Act') is not maintainable, inasmuch as, the Petitioners do not claim the disputed plots through a trustee, office-holder or servant who has been dismissed or suspended from his office or is otherwise not entitled to be in possession. It is further said that the Petitioners are in possession of the plots in good faith on their own account, and hence, they cannot be evicted in a proceeding u/s 68 of the Act. According to Mr. Adhikari, the Explanation to Section 68 of the Act which says that a person claiming under an alienation contrary to Sub-section (1) of Section 19 and Section 24 of the Act shall not be regarded as a person claiming in good faith within the meaning of the section has no application to the Petitioners' case, because the alienations in their favour on the basis of which they claim the two plots are prior to the commencement of the Act as well as of the Orissa Hindu Religious Endowments Act, 1939 in which Section 58 corresponds to Section 19 of the present Act. Mr. Adhikari further contends that the Petitioners being in possession of the disputed plots since 1927, even if the alienations in their favour would be taken to be invalid as per the provisions of the Madras Hindu Religious Endowments Act which was applicable to the institution of Shri Jagannath Swami prior to the commencement of the Orissa Hindu Religious Endowments Act, 1939, they have perfected their title by adverse possession, and hence, they cannot be evicted in a summary proceeding u/s 68 of the Act. Thirdly, it is contended by Mr. Adhikari that there being a special provision in the Act in Section 25, the proper proceeding applicable to the case is one under the said section and not u/s 68 of the Act. These contentions of Mr. Adhikari need careful consideration.

4. So far as the applicability of Section 68 of the Act to the case of the Petitioners is concerned, the language of the section clearly shows that a proceeding u/s 68 can only be instituted against a trustee who has been dismissed, suspended or is otherwise not entitled to be in possession when he prevents the newly appointed trustee from taking possession of the endowment properties. Further, Section 68

of the Act has no application against, a person who claims the property in good faith on his own account. The Explanation to Section 68 of the Act says that a person claiming under an alienation contrary to Section 19 or Section 24 of the Act shall not be regarded as a person claiming in good faith. In the present case, the alienations in favour of the Petitioners being prior to the commencement of the Act it cannot be said that the alienations in favour of the Petitioners are contrary to either Section 19 or 24 of the Act. Secondly, the alienations in favour of the Petitioners being in the year 1927 and the proceeding u/s 68 of the Act having been started in the year 1966, the claim of the Petitioners that they have perfected their title by adverse possession cannot be lost sight of Section 68 of the Act does not empower the Assistant Commissioner or the Commissioner to forcibly take possession of land by evicting a person who has been in possession for more than the statutory period and has acquired title by adverse possession. Regarding the plea of limitation, the further question which arises for consideration is as to what would be the period necessary to perfect title of the person claiming adversely to the deity. Under Article 96 of the Limitation Act, for a suit by a manager of a Hindu religious or charitable endowment to recover possession of the property comprised in the endowment which has been transferred by a previous manager for a valuable consideration is twelve years from the date of death, resignation or removal of the transferor or the date of appointment of the Plaintiff as manager of the endowment whichever is later. If this Article would apply to the case of the Petitioners, opp. party No. 2 having been appointed in the year 1962 as the managing trustee, for a suit to be instituted by him to recover possession of the aforesaid two plots from the Petitioners, the period of limitation would be twelve years from 1962. There are also authorities which say that a person being in possession of the property belonging to a religious endowment, by asserting a hostile title, begins to prescribe his title against the endowment from the date of his possession. There is no dispute that a proceeding u/s 68 of the Act is summary in nature. It cannot therefore be said that questions of law regarding limitation would not be decided in such a proceeding. The impugned order does not decide what would be the period of limitation in the present case and what provision of Limitation Act would govern the case. That apart, when there is special section, viz : Section 25 under the Act which is more appropriate to the present case, a proceeding u/s 68 of the Act, in our opinion, is misconceived. On the aforesaid analysis of the legal position, we are of the view that in the case before us where alienations in favour of the Petitioners are a bout half a century old and when the Petitioners have been in possession of the aforesaid two plots since the year 1927 till the date of commencement of the proceeding u/s 68 of the Act in the year 1966 asserting a hostile title in themselves, they cannot be evicted in a summary proceeding u/s 68 of the Act without even deciding if the Petitioners have perfected their title by adverse possession. The proper course for the managing trustee in a case of this nature is to take recourse to either a regular suit or a proceeding u/s 25 of the Act for recovery of possession of the properties belonging to the endowment of Shri Jagannath Swami. The question of limitation and of adverse possession

which has a great bearing in the present case cannot be left undecided before an eviction order can be passed against the Petitioners.

5. In the result therefore, we allow the writ application and quash the impugned order of opp. party No. 1 dated 20-7-1970 in Revision Case No. 9 of 1970 and leave it open to the managing trustee to take recourse to an appropriate proceeding according to law for eviction of the Petitioners from the disputed plots. We, however, direct the parties to bear their own costs of this proceeding.

R.N. Misra. J.

6. I agree.