

**(2016) 06 OHC CK 0042**  
**In the Orissa High Court**  
**Case No : RFA No. 140 of 2009**

Saraswati Dei @ Jena

APPELLANT

Vs

Sri Gopinath Jew

RESPONDENT

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**Date of Decision :** 24-06-2016

**Acts Referred:**

Limitation Act, 1963 — Article 65, 96

ORISSA HINDU RELIGIOUS ENDOWMENTS Act, 1951 — Section 25

**Citation :** (2016) AIR(Orissa) 140 : (2016) 2 ILRCuttack 911

**Hon'ble Judges :** K.R. Mohapatra, J.

**Bench :** Single Bench

**Advocate :** M/s. P. Kar, G.D. Kar, A.K. Mohanty, R.N.Prusty & N.R.Satapathy, Advocates, for the Appellant; M/s. P.K. Rath, S. Barik, S. Swain, S.M. Ali, Miss S. Sahoo and S. Mohanty, Advocates, for the Respondents No. 1; M/s S.P. Das & Mr. A.K. Nath, Advocates, for t

**Final Decision :** Dismissed

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## Judgement

K.R. Mohapatra, J.—This appeal has been filed assailing the judgment and decree dated 30.10.2008 and 15.11.2008 respectively passed by

the learned Civil Judge (Senior Division), Jagatsinghpur in C.S. No.208 of 2004 dismissing the suit. The suit was filed for declaration of right, title

and interest of the plaintiff by way of adverse possession; to declare the order dated 06.04.2004 passed by the Commissioner of Endowments,

Odisha, Bhubaneswar (defendant No.2) in O.A. No.128 of 1995 (II) under Section 25 of the Orissa Hindu Religious Endowments Act, 1951 (for

short "the OHRE Act") as null and void and for permanent injunction.

2. Case of the plaintiff in a nut shell is that the suit land, i.e., Consolidation Khata No.15, Plot No.236 measuring an area of Ac.0.32 decimal,

corresponding to Sabik Settlement Khata No.17, Plot No.274, measuring an area

Ac.0.32 decimal in Mouza: Anakhia, in the district of

Jagatsinghpur stood recorded in the name of Sri Gopinath Jew, Bije at Adhanga, district-Jagatsinghpur (defendant No.1) (for short, "the deity").

The then Managing Trustee of the deity, Sri Harekrushna Tripathy sold the suit land to the plaintiff vide Registered Sale Deed No.3919 dated

11.07.1959 for valuable consideration and delivered possession thereof. Since then, the plaintiff has been in peaceful possession over the same

exercising all manners of right, title and interest thereon. The alienation was made without obtaining prior permission under Section 19 of the

OHRE Act. However, the Managing Trustee did not take any step to recover possession of the suit land from the plaintiff within the statutory

period of 12 years. Thus, the plaintiff has acquired title over the suit land through adverse possession. Her possession over the suit land has been

recognised in the Record of Right in Major Settlement published on 06.04.1983 and Consolidation ROR finally published on 30.12.1991

recording her illegal possession in the remarks column. On 04.12.1995, the Managing Trustee of the deity filed a petition under Section 25 of the

OHRE Act for recovery of possession of the suit land in O.A. No.128 of 1995 (II). The plaintiff could not contest the said case due to her old

age. As such, the defendant No.2 vide order dated 06.04.2004 directed eviction of the plaintiff from the suit land and sent requisition to the

Collector, Jagatsinghpur (defendant No.3) to deliver vacant of possession of the suit land to the deity. On receipt of the requisition, the Tahasildar,

Jagatsinghpur (defendant No.4) sent notice to the plaintiff for execution of the requisition of defendant No.2. On receipt of the notice, the plaintiff

apprehending her dispossession filed the suit for aforesaid relief.

3. Defendant Nos.3 and 4 neither filed any written statement nor contested the suit; hence, they were set ex-parte. Defendant No.2 did not file any

separate written statement, but supported the case of defendant No.1 by filing a memo dated 23.03.2006. Defendant No.1 in his written statement

contended that the defendant No.1 is a Hindu Public Religious Institution (deity) and one Harekrushna Tripathy was the Managing Trustee of the

deity till 1985. Said Harekrushna Tripathy, the then Managing Trustee of the deity, executed a nominal sale deed dated 11.07.1959 in favour the

plaintiff. However, no delivery of possession was made to the plaintiff pursuant to

such sale. The sale being in contravention of Section 19 of the OHRE Act is void ab initio. The deity, defendant No.1 being a perpetual minor, its right cannot be extinguished under Section 27 of the Limitation Act, 1963. The status of the plaintiff is that of a trespasser in respect of the suit land. Thus, the plaintiff has never acquired any title over the suit land by adverse possession. When one Narayana Tripathy was appointed as the Managing Trustee of the deity and came to know about the illegal possession of the plaintiff over the suit land, he filed a petition (OA No.128 of 1995) under Section 25 of the OHRE Act for recovery of possession. The plaintiff preferred not to contest the said case. Accordingly, the defendant No.2 following due procedure of law rightly directed for eviction of the plaintiff from the suit land vide his order dated 06.04.2004. Thus, he contended that the suit is not maintainable and prayed for dismissal of the same.

4. Taking into consideration the rival pleadings of the parties, learned Civil Judge (Senior Division), Jagatsinghpur framed the following issues:

- (i) Whether the suit is maintainable?
- (ii) Whether the plaintiff has got cause of action to file this suit?
- (iii) Whether the plaintiff has acquired title over the suit land by way of adverse possession?
- (iv) Whether plaintiff is entitled to get the relief of permanent injunction?
- (v) Whether the plaintiff is entitled to any other relief or reliefs as prayed for?

5. In order to substantiate their respective case, the plaintiff examined five witnesses including herself as PW-4. PW-5 was her son. PWs. 1, 2 and

3 were witnesses in support of the possession of the plaintiff over the suit land. She also adduced documentary evidence including Ext.1, the

registered sale deed dated 11.07.1959, Ext.2, the Sabik ROR., Exts.3 and 4, certified copies of the MS ROR and Consolidation ROR

respectively. Though the Managing Trustee examined himself as DW-1, he preferred not to adduce any documentary evidence in support of his case.

6. On consideration of issue No.(iii), which is the vital issue for consideration in this case, learned Trial Court came to a conclusion that the plaintiff

has not acquired any title in respect of the suit land by way of adverse

possession. Consequently, learned Trial Court refused to grant relief of permanent injunction against the defendants while answering issue No.(iv).

7. Mr. G.D. Kar, learned counsel for the for the appellant strenuously urged that the petition under Section 25 of the OHRE Act, i.e., O.A.

No.128 of 1995 is hit by Section 27 read with article 65 of the Limitation Act, 1963. He further submitted that the sale deed under Ext. 1 is void

ab initio in the eye of law as alienation was made without obtaining permission from defendant No.2, namely, the Commissioner of Endowments

under Section 19 of the OHRE Act. Relying upon a decision in the case of N. Varada Pillai v. Jeevarathnammal, reported in AIR 1919 PC

44, which was subsequently followed in the case of Collector of Bombay v. Municipal Corporation of State of Bombay, reported in AIR

1951 SC 469 and the case of State of W.B. v. Dalhousie Institute Society, reported in (1970) 3 SCC 802, he submitted that possession on

the basis of an invalid transaction is adverse per se. The possession of the plaintiff over the suit land is uninterrupted, open, in hostile animus to the

interest of the true owner and beyond the statutory period provided under article 65 of the Limitation Act, 1963. Thus, right, if any of the

defendant No.1 in respect of the suit property, is extinguished at the determination of the period provided under article 65 of the Limitation Act,

1963. Learned Trial Court committed error of law in applying article 96 of the Limitation Act, 1963, which is not applicable to the case at hand.

He also placed reliance on a decision of this Court in the case of Govinda Jew Thakur and another v. Surendra Jena and others, reported

in AIR 1961 Orissa 102, in which it is held that if the sales or the transfers are void ab initio, then the transferees' possession becomes adverse

from the date of the transfer, inasmuch as the transferees had no right in respect of the properties at all. They were mere trespassers; and if by a

continuous period of 12 years they have matured their rights, then the rights be available not only as against the transferor but against the whole

world including the deity. Thus, he prayed to set aside the impugned judgment and decree.

8. Mr. A.K. Nath, learned counsel for the Commissioner of Endowments (respondent No.2) vehemently opposed the submission of Mr. Kar and

contended that article 96 of the Limitation Act, 1963, clearly stipulates that a suit

or proceeding can be instituted by the Manager of a Hindu

Religious and Charitable Endowment within 12 years from the date of appointment of the plaintiff as Manager (Managing Trustee) to recover

possession of the immovable property comprised in the endowment, which has been transferred by the previous Manager for valuable

consideration. He contended that Sri Harekrushna Tripathy was the Managing Trustee of the deity till 1985, who alienated the suit land in favour of

the plaintiff in the year 1959. After him, Sri Narayana Tripathy became the Managing Trustee in the year 1986. At his instance, the proceeding

under Section 25 of the OHRE Act was initiated in the year 1995. Thus, the proceeding under Section 25 of the OHRE Act was well within the

statutory period provided in article 96 of the Limitation Act, 1963. Consequently, Section 27 of the Limitation Act has no application to the case at

hand. He further contended that the suit is not maintainable in the eye of law and the learned Trial Court has rightly answered the issued Nos. (iii)

and (iv) against the plaintiff. Accordingly, he prayed for dismissal of the appeal.

9. Mr.P.K.Rath, learned counsel for the respondent No.1 supported the stand taken by Mr. Nath. He further contended that the possession of the

plaintiff, irrespective of its length does not confer any title on the plaintiff by adverse possession. As the deity is a perpetual minor, the right of the

deity does not extinguish in terms of Section 27 of the Limitation Act, 1963. Thus, the appeal merits no consideration and is liable to be dismissed.

10. From the rival contentions of the parties and discussions made by learned Civil Judge (Senior Division), Jagatsinghpur in the impugned

judgment, the issue that crops up for consideration in this appeal is whether the plaintiff can claim adverse possession against the deity (defendant

No.1).

Article-65 of the Limitation Act, 1963 provides that a suit for possession of immovable property or any interest thereon based on title can be filed

within 12 years, when the possession of the defendants become adverse to the plaintiff. Article 96, on the other hand, provides that a suit can be

launched by the Manager of the Hindu Religious and Charitable Endowment to recover possession of the immovable property comprised in the

endowment, which has been transferred by a previous Manager for a valuable consideration within 12 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. As emanates from the case

record, one Harekrushna Tripathy, who alienated the property in favour of the plaintiff in the year 1959, was the Managing Trustee of the deity till

1985. It is also not disputed that Sri Narayana Tripathy, who launched the proceeding under Section 25 of the OHRE Act assumed his charge in

the year 1986. The proceeding under Section 25 of the OHRE Act was launched in the year 1995 [O.A. No.128/95(II)]. Mr. Kar submitted that

article 65 of the Limitation Act, 1963 is applicable to the case at hand. The proceeding under Section 25 of the OHRE Act, being initiated in the

year 1995, is barred by limitation, as by that date, the plaintiff had perfected his title over the suit land by adverse possession. Mr. Rath as well as

Mr. Nath, on the other hand, submitted that the proceeding is within the period of limitation, in view of application of article 96 of the Limitation

Act, 1963. Admittedly, no period of limitation is provided for initiation of a proceeding under Section 25 of the OHRE Act.

11. In order to substantiate his case, Mr. Kar relied upon the decision of this Court in Govinda Jew Thakur and another (supra). In the said case,

Hon"ble Division Bench of this Court has held that article 134-B of the Limitation Act, 1908 which came to the statute book in the year 1929 by

virtue of Amendment Act, 1929 (Article 96 in the Limitation Act, 1963) will apply only to cases where the sales can be avoided by the succeeding

Mahanta (trustee); but if the sale or the transfer is void ab initio, then the transferee's possession becomes adverse from the date of transfer,

inasmuch as the transferee had no right in respect of the properties at all. A similar view has also been taken by the Hon"ble Division Bench of this

Court in the case of Chintamani Sahoo (dead) and after him Subodh Kumar Sahoo and others v. Commissioner of Orissa Hindu

Religious Endowments, Orissa and others, reported in (56) 1983 CLT 47, while dealing with the applicability of Article 96 of the Limitation

Act, 1963, this Court held as follows:-

12. This Article refers to a transfer for valuable consideration. A transfer which is void ab initio is, in the eye of law, no transfer at all and hence

will not come within the scope of this Article. This Article obviously applies to cases where the transfer can be avoided or is voidable. But if the

transfer is void ab initio then Article 65 of the new Limitation Act apply. The transferee's possession since the date of the transfer becomes

adverse from the date of the transfer inasmuch as the transferee had no right in respect of the property at all and he was a mere trespasser.

Thus, in view of the ratio decidendi in the aforesaid two case laws, it emanates that voidable transaction is only covered under article 96 of the

Limitation Act, 1963 and not a transaction, which is void ab initio. There can be no quarrel over the position of law that alienation without prior

sanction of the Commissioner of Endowments under Section 19 of the OHRE Act is void ab initio.

12. At this stage, it be profitable to read few lines of the decision in the case of Amrendra Pratap Singh v. Tej Bahadur Prajapati and others,

reported in AIR 2004 SC 3782, at paragraph-25 of which the Hon''ble Supreme Court while dealing with applicability of Limitation Act, 1963

to a proceeding under paragraph 3-A of the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956

(for short, "Regulations, 1956") held as follows:-

25. ....A provision has been made by para 3-A of the 1956 Regulations for evicting any unauthorised occupant, by way of trespass or otherwise,

of any immovable property of a member of a Scheduled Tribe, the steps in regard to which may be taken by the tribal or by any person interested

therein or even suo motu by the competent authority. The concept of locus standi loses its significance. The State is the custodian and trustee of the

immovable property of tribals and is enjoined to see that the tribal remains in possession of such property. No period of limitation is prescribed by

para 3-A. The prescription of the period of twelve years in Article 65 of the Limitation Act becomes irrelevant so far as the immovable property of

a tribal is concerned. The tribal need not file a civil suit which will be governed by the law of limitation; it is enough if he or anyone on his behalf

moves the State or the State itself moves into action to protect him and restores his property to him. To such an action neither Article 65 of the

Limitation Act nor Section 27 thereof be attracted.

(emphasis supplied)

Applicability of the principles laid down by the Hon''ble Supreme Court herein above to the case at hand can be adjudged by reading the relevant

provisions of law. Paragraph-3-A of the Regulations, 1956 reads as follows:-

### 3-A Eviction of person in authorised occupation of property-

(1) Where a person is found to be in unauthorized occupation of any immovable property of a member of the Scheduled Tribes by way of trespass

or otherwise, the competent authority may, either on application by the owner or any person interested therein, or on information received from the

Gram Panchayat] or on his own motion, and after giving the parties concerned an opportunity of being heard, order ejectment of the person so

found to be in unauthorized occupation and shall cause restoration of possession of such property to the said member of the Scheduled Tribe or to

his heirs.

(2) The provisions contained in sub-sections (2), (3) and (4) of section 3 shall, mutatis mutandis, apply to the proceedings instituted or initiated

under subsection (1).

(3) In every case after finalisation of the proceedings under sub-section (1), the competent authority shall make a report to the concerned Grama

Panchayat about the order of ejection passed in respect of any person in unauthorized occupation of any immovable property of a member of a

Scheduled Tribe and the restoration of possession of the property to such member on his heirs and in case of failure of such restoration, the

reasons for such failure.

The aforesaid provision has been incorporated in the Regulations, 1956 because a tribal is considered by the Legislature not to be capable of

protecting the right over his own immovable property.

13. Likewise, the OHRE is a benevolent statute to protect the rights and properties of Hindu Religious Institutions of the State. The deity is a

perpetual minor. It is incapable of protecting its rights over the endowment attached to it. Thus, all religious institutions are being managed by

trustee (hereditary or non-hereditary) upon whom the administration of the religious institutions and its endowments are vested. The Legislature has

consciously and diligently made different provisions under the OHRE Act to achieve its object and purpose. Section 25 of the OHRE Act, 1951

reads as follows:-

Section 25 - Recovery of immovable trust property unlawfully alienated- (1) In

case of any alienation, in contravention of Section 19 of this Act or Section 51 of the Orissa Hindu Religious Endowments Act, 1939, or in case of unauthorised occupation of any immovable property belonging to or given or endowed for the purpose of any religious institution, the Commissioner may, after summary enquiry as may be prescribed and on being satisfied that any such property has been so alienated or unauthorisedly occupied send requisition to the Collector of the district to deliver possession of the same to the trustee of the institution or a person discharging the function of the said trustee.

(2) The Collector in exercising his powers under Sub-section (1), shall be guided by rules made under this Act.

(3) Any person aggrieved by the action of the Collector may institute a suit in the Civil Court to establish his rights.

14. The scope and intention of Section 25 of the OHRE Act is akin to the provision under paragraph 3-A of the Regulations, 1956. Admittedly,

no period of limitation is provided for institution/initiation of a proceeding under Section 25 of the OHRE Act. On a conjoint reading of the

provisions of Section 25 of the OHRE Act and the principles laid down in paragraph-25 of the Amrendra Pratap Singh (supra) by the Hon'ble

Supreme Court, there can be no iota of doubt that the prescription of period of limitation as provided in article 65 or article 96 of the Limitation

Act, 1963 becomes irrelevant so far as recovery of immovable property of the religious institutions is concerned. The deity or the religious

institution, as the case may be, need not file a Civil Suit to recover the property unlawfully alienated or occupied. The deity can recover the

property by filing a petition under Section 25 of the OHRE Act before the Commissioner of Endowments, Odisha, Bhubaneswar. Thus, the

restrictions of the Limitation Act, 1963 have no application to the proceedings under Section 25 of the OHRE Act. When the Legislature

consciously has not imposed any restriction or prescribed period of limitation to initiate a proceeding under Section 25 of the OHRE Act, any

restriction for initiation of the proceeding under such provision by applying the provisions of the Limitation Act will make the provision itself

nugatory and the object of the same will be frustrated. The OHRE Act being a special statute overrides the provisions of the Limitation Act, 1963.

15. The concept of adverse possession has undergone a radical change in recent days. The Hon"ble Supreme Court has shown repulsion to the

concept of acquiring title through adverse possession. Recently, the Hon"le Apex Court in the case of Gurudwara Sahib v. Gram Panchayat

Village Sirthala & Anr, reported in (2014)1 SCC 669, at paragraph-7 held as follows:-

7. In the Second Appeal, the relief of ownership by adverse possession is again denied holding that such a suit is not maintainable. There cannot

be any quarrel to this extent the judgments of the courts below are correct and without any blemish. Even if the plaintiff is found to be in adverse

possession, it cannot seek a declaration to the effect that such adverse possession has matured into ownership. Only if proceedings filed against the

appellant and appellant is arrayed as defendant that it can use this adverse possession as a shield/defence.

In the case of Amrendra Pratap Singh (supra), while dealing with concept of adverse possession in connection with paragraph 3-A of the Orissa

Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956 (for short, "Regulations, 1956), Hon"ble Supreme

Court at paragraph-23 held as follows:-

23. The nature of the property, the nature of title vesting in the rightful owner, the kind of possession which the adverse possessor is exercising,

are all relevant factors which enter into consideration for attracting applicability of the doctrine of adverse possession. The right in the property

ought to be one which is alienable and is capable of being acquired by the competitor. Adverse possession operates on an alienable right. The right

stands alienated by operation of law, for it was capable of being alienated voluntarily and is sought to be recognised by the doctrine of adverse

possession as having been alienated involuntarily, by default and inaction on the part of the rightful claimant, who knows actually or constructively

of the wrongful acts of the competitor and yet sits idle. Such inaction or default in taking care of one"s own rights over property is also capable of

being called a manner of ""dealing"" with one"s property which results in extinguishing one"s title in property and vesting the same in the wrongdoer in

possession of property and thus amounts to ""transfer of immovable property"" in the wider sense assignable in the context of social welfare

legislation enacted with the object of protecting a weaker section.

(emphasis supplied)

It is thus clear from the aforesaid observation that the doctrine of "adverse possession" is available in respect of the properties over which the true owner has the "right of voluntary alienation".

16. The deity is a perpetual minor and has no voluntary alienable right over its property and/or endowment. A trustee can alienate the property of

the deity only with the prior sanction of the Commissioner of Endowments, Odisha, Bhubaneswar under Section 19 of the OHRE Act. Thus,

applying the principles as quoted and discussed above, it can be safely said that no title over the immovable properties of a religious institution can

be acquired by applying principles of adverse possession.

The Hon"ble Supreme Court in the case of A.A. Gopalakrishnan v. Cochin Devaswom Board & Ors, reported in AIR 2007 SC 3162, at

paragraph 10 held as follows:-

10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their

Trustees/Archaks/Sebais/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of

temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or

adverse possession. This is possible only with the passive or active collusion of the concerned authorities. Such acts of "fences eating the crops"

should be dealt with sternly. The Government, members or trustees of Boards/ Trusts, and devotees should be vigilant to prevent any such

usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from

wrongful claims or misappropriation.

In view of the discussions made above, the case law reported in Govinda Jew Thakur and another (supra) and Chintamani Sahoo (dead) and after

him Subodh Kumar Sahoo and others (supra) have no application to the present case.

17. Mr. Rath, learned counsel for the respondent No.1 in support of his case placed reliance upon a decision in the case of Sarbeswar Mounaty

v. Chintamani Sahoo (Dead) by Lrs., reported in 88 (1999) CLT 433 (SC), wherein it is held that a possession is adverse only if in fact one

holds possession by denying title of the lessor or by showing hostility by act or words or in cases of trespassers as the case may be as against

lessor or other owner of the property in question. The Hon'ble Supreme Court in the said case denied the appellant to have acquired title by

adverse possession as the possession of the appellant was that of a lessee, which was permissive one. The fact involved in the said case is

distinguishable inasmuch as the transaction herein this case involves a void sale and not a lease. Thus, while accepting the ratio decided, I am of the

opinion that the decision is not applicable here. Admittedly, the deity or its Managing Trustee has not filed any suit for recovery of the suit land

from the plaintiff. Moreover, and rightly so, the deity need not file any suit for recovery of the suit property unlawfully alienated. Section 25 of the

OHRE Act takes care of the same to which the provisions of the Limitation Act are not applicable. In that view of the matter, the order dated

06.04.2004 passed by the Commissioner of Endowments, Odisha, Bhubaneswar (defendant No.2) in O.A. No.128 of 1995 (II) cannot be held

to be illegal and void. The Commissioner had jurisdiction to entertain such an application filed by the defendant No.1 and he has rightly directed for

eviction of the plaintiff from the suit land. In that view of the matter, this Court finds no infirmity in the findings rendered by the learned Trial Court

while answering issues (iii) and (iv) as the plaintiff has not acquired any title by adverse possession over the suit land. Thus, the plaintiff has no

cause of action to file the suit. Resultantly, the findings of learned trial Court on other issues needs no interference.

18. Accordingly, the appeal merits no consideration and the same is dismissed, but in the circumstances there shall be no order as to cost.