

(2004) 01 OHC CK 0053

In the Orissa High Court

Case No : Second Appeal No. 51 of 1997

Sri Prafulla Kumar Kar and Another

APPELLANT

Vs

Sri Gopinath Singh Samanta and Others

RESPONDENT

Date of Decision : 20-01-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2005) 99 CLT 85

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : B. Mishra, for the Appellant; N.K. Sahoo and D.R. Swain, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—This appeal has been directed against the judgment and decree dated 28.9.1996 and 12.10.1996 respectively passed by the District Judge, Balasore in S.J. Appeal No. 68 of 1994 confirming the judgment and decree dated 7.10.1994 and 5.11.1994 respectively of the Civil Judge (S.D.), Balasore in Title Suit No. 194 of 1990.

2. The appellants before this Court were the plaintiffs in the Court below. They filed Title Suite No. 194 of 1990 before the Civil Judge (S.D.), Balasore for a declaration of title for permanent injunction and for a declaration that the three sale deeds bearing Nos. 1277, 1278 and 1279 dated 21.3.1990 were void, inoperative and were not binding on the plaintiffs, and the sale deeds executed by Defendant No. 1 - Raghunath Pati were void as the vendor had no right to sell the suit property in favour of anybody.

3. The brief case of the plaintiff-appellants was that, they were representing the Balasore Saraswata Sangha (in short "BSS") whereas defendant-respondents 2 and 3 were representing the Balasore Town Sangha (in short "BTS") and both the organisations were the recognised branches of their Central Organisation

known as "Nilachala Saraswata Sangh", Puri. The devotees of Nigamananda Saraswati Dev had established the Central Organisation of which late Durga Charan Mohanty was the Secretary. There were different branches of Sangha at different places of the State established on the basis of the guidelines of Nilachala Saraswata Sangh, Puri. According to the appellants, the Branch Sanghas were independent Organisation, and used to manage their affairs by framing their own Memoranda and Articles of the Association. The BSS established an Ashan Mandir at Sahadev Khunta, Balasore with the approval of Nilachala Saraswata Sangha, Puri and settled the lands for the aforesaid purpose under "Ka" and "Kha" schedules appended to the plaint acquired in the year 1971 and 1976 respectively out of the funds raised by the members of the Sangha. The Nilachala Saraswata Sangh Puri had never, provided any financial assistance for purchasing its property, but the sale deed discloses the name of vendee being Parmahansa Srimad Sri Sri Nigamananda Saraswati Dev Thakur Bije Sahadey Khunta Sanmandir C/o Sri Durga Charan Mohanty, Secretary of Nilachala Saraswata Sangh, Puri. During the year 1980 Respondent No. 2 with a group of the members of the BSS formed another Sangha in the name "Balasore Town Sangha (for short "BTS"). Although the BSS continued to possess the suit lands and exercised ownership over the same, the BTS acquired a piece of land at Bhaskarganj area in Balasore Town and after the death of Durga Charan Mohanty in the year 1985 there was a split in Nilachala Saraswata Sangh, Puri which was bifurcated into two parallel organisations, both claiming to be working for Nilachala Saraswata Sangh, Puri, one of such Sangha being led by Jagannath Samantray and Daitari Nanda, as the President and the Secretary respectively, which according to the appellants was the real Nilachala Saraswata Sangh, Puri. The other Sangha was led by Chaitanya Charan Das and Raghunath Pati as the President and the Secretary respectively. Taking advantage of the situation, the split up Sangha with the aid and assistance of the President of Balasore Town Sangha, transferred the suit lands by executing the sale deeds Exts. AA, AA-1 and AA-2 in favour of Respondents 4 to 7. Since Balasore Town Sangha had no right, title, interest or possession over the suit lands and the fact that no consideration pursuant to sales had passed nor possession was ever delivered, the suit was filed.

Defendant Nos. 1 to 3 Respondents 1 to 3 filed their joint written statement denying all the averments made in the plaint. They specifically pleaded in the written statement that Nilachala Saraswata Sangh, Puri was the Central Organisation of all the followers of Sri Sri Thakur Nigamananda in Orissa. The Sakha Sanghas were situated at different places of the State, and the said Sanghas were controls and managed by Nilachala Saraswata Sangh, Puri in all respects. The Sakha Sanghas could acquire, property for their respective Ashan Mandir in the name of Sri Sri Thakur, but the Thakur shall be represented through Secretary Nilachala Saraswata Sangh, Puri subject to the approval of the Kendra Sangha. According to them, the BTS and BSS were two names of same branch of the Sangha, which were represented by Respondents 2 and 3. Initially

it was started on 1.12.1965 in the name of Balasore Town Pathachakra in a rented house. Thereafter, Pathachakra was held in the house of Respondent No. 2 with permission of Durga Charan Mohanty, the then Secretary of Nilachala Saraswata Sangh, Puri. In the year 1977 the aforesaid Pathachakra got its approval by the Nilachala Saraswata Sangh, Puri to function as a Sakha Sangha and the same was called as "Balasore Town Sangha (BTS)". In the year 1971 the aforesaid Pathachakra got its approval by the Nilachala Saraswata Sangh, Puri to function as a Sakha Sangha and the same was called as "Balasore Town Sangha (BTS)". In the year 1976 it was registered under the Societies Registration Act in the name and style "Balasore Saraswata Sangha (BSS)" in which Respondent No. 2 Appellant No. 2 and Respondent No. 3 were elected as President, Secretary and Asst. Secretary respectively. The suit lands were acquired in the name of Thakur Paramhansa, Srimada Swami Nigamananda Saraswati Dev, Bije Sahadev khunta, Marfat Durga Charan Mohanty. Adjoining the suit lands Appellant No. 2- Gouranga Pradhan acquired a piece of land of his own. Gradually, Appellant No. 2 became indisciplined and acted against the interest of Sangha and by demolishing a portion of boundary wall of the suit land, constructed his own house over it for which Nilachala Saraswata Sangh intervened in the matter and construction of Ashan Mandir on the suit land was stopped on the advice of Durga Charan Mohanty, as no amicable settlement could be arrive at with Appellant No. 2. The Ashan Mandir was decided to be shifted and accordingly a piece of Government land was accored at Bhaskarganj area. Ultimately due to indisciplined activities of Appellant No. 2 he was suspended from the membership and debarred from rendering any service of Seva Puja of the Sangha. This was done in the year 1978. Thereafter Respondent No. 3 functioned as the Secretary in place of Appellant No. 2. It was alleged that both the appellants then colluded and started acting against the interest of the Sangha and in the year 1981 the appellants started a separate organisation and the Thakur was shifted to Chandragadia with the approval of the Secretary/Parichalaka of the Kendra Sangha. In the year 1981 another Sangha called " Balasore Sangha II" was formed by Appellant No. 2 along with some members. Deceased Defendant No. 1- Raghunath Pati was re-elected as Secretary of the Sangha in "Utkal Pradeshika Bhakta Sammilani" held at Balasore in 1989. But during that year i.e., 1989 there was dissension among the members of the outgoing Governing Body of Nilachala Saraswata Sangha (NSS), Puri and out of nine members of the Sangha two convened a parallel "Pradeshika Bhakta Sammilani" at Birtung, which according to Appellant Nos. 1 to 3 was separate from Nilachala Saraswata Sangha having no legal entity. Out of the nine members of the Governing Body, seven members had attended the Sammilani at Balasore and only two had attend the Sammilani at Birtung and devotees of Birtung constituted a separate Governing Body by electing one Biswanath Pradhan as President and one Daitari Nanda as Secretary. The said Raghunath Pati on the basis of a resolution of the Nilachal Saraswata Sangha transferred the suit lands to Respondent Nos. 4 to 7 in pursuance of the sale deeds. According to the respondents the appellants had no locus standi to file the suit as they did not represent the BSS otherwise called

BTS.

4. In their respective written statements Defendants-Respondents 4 and 5 as also Respondents 6 and 7 supported the case of Defendants-Respondents 1 to 3 and they pleaded that after execution of the sale deed they had got delivery of possession of the suit lands.

5. On the basis of the aforesaid pleadings of the parties, the Court below framed as many as nine issues. Three witnesses were examined on behalf of the plaintiffs and three on behalf of the defendants.

In order to prove their respective cases, several documents were exhibited on behalf of the respective parties.

6. The Trial Court after evaluating the evidence on record dismissed the suit, inter alia, on the following findings :

(a) That the suit was not maintainable as all necessary parties were not brought on record.

(b) Plaintiffs had no right, title and interest over the suit land, Defendant No. 1 as the Secretary of NSS, Puri had got the right to sell the suit lands and transfer the same.

(c) The sale deeds were legally valid.

(d) In absence of any evidence as regards claim of the plaintiffs that the Sakha Sangha represented by them was the real "BSS" Sakha Sangha represented by Defendant Nos. 2 and 3 was the real registered "BSS".

7. Against the aforesaid judgment and decree the present appellants filed an appeal before the District Judge, Balasore, which was registered as S.J. Appeal No. 68 of 1994. The first Appellate Court did not interfere with the findings of the Court below and dismissed the appeal. Challenging the aforesaid concurrent findings of the Courts below, the plaintiff-appellants have filed this second appeal u/s 100 of the Civil Procedure Code.

8. This Court on 17.3.1999 admitted this appeal and the questions indicated in Para J (i) and J (iii) at Page 10 of the Appeal Memo were treated to be substantial questions of law for determination in the appeal, which are as follows :

(i) Whether deceased Defendant No. 1 had any locus standi/competency to alienate the suit land ?

(iii) Whether the question of actual nucleus of Nilachala Saraswata Sangh, Puri could have been gone into by the courts below when a Court of competent jurisdiction is in seisin of that issue exhaustively.

9. Let us first examine Question No. 1.

According to the Learned Counsel for the appellants, during the year 1985 dissension cropped up in Nilachala Saraswata Sangh, Puri and after the death of Durga Ch. Mohanty during the year 1985 there was faction in the Nilachala Saraswata Sangh, Puri and two groups claimed to be the real Nilachala Saraswata Sangh, According to the Learned Counsel for the appellants, Nilachala Saraswata Sangh, led by Daitari Nanda as Secretary and Jagannath Samantray as President was real one and the other led by the deceased Defendant No. 1 as spinter group, had no claim over the nucleus of Nilachala Saraswata Sangh, Puri. It was further argued that taking advantage of the confusing situation after the death of Durga Ch. Mohanty, Sri Raghunath Pati, deceased Defendant No. 1 transferred the suit lands by registered sale deeds vide Exts. AA, AA/1, and AA/2 in favour of Respondent No. 4 to According to the appellants, the vendor had no right, title or interest over the suit lands and no consideration pursuant to the sales was passed and no possession was delivered.

In this regard, let me first look at the findings arrived by the Trial Court. Paragraph 8 of the Trial Court judgment is vital.

10. The Trial Court considered the bye-laws of the Nilachala Saraswata Sangh, Puri which was registered in the year 1973 and it was marked as Ext. E, Ext. M is the memorandum of Association of "BSS" registered in the year 1976. Nothing was brought on record to show about any bye-laws having been framed prior to 1971 in which the main portion of the suit lands was acquired vide Ext. L.

According to the Trial Court, the said Ext. E and Ext. M reflect that Nilachala Saraswata Sangh, Puri was all powerful and was exercising full control over the Sakha Sangha. The bye-laws also provided that the Governing Body of the Nilachala Saraswata Sangh, Puri could as a temporary measure take over the Seva Puja of the Thakur in any Sakha Sangha if it was convinced that serious omissions had been made resulting in the serious departure from the ideologies of the Thakur.

The Parichalaka of Nilachala Saraswata Sangh, Puri was the Chief Organiser of the Kendra Sangha, who used to supervise all the branches affiliated to Kendra Sangha and take disciplinary measures against Sakha Sangha. Similarly, the Memorandum of Association with respect to BSS (Ext. M) reflects that BSS was to render full assistance and co-operation to the Kendra Sangha in all its works.

As per Article 19 of the BSS bye-laws, anything not provided in the said bye-laws (the memorandum of association) was subject to the decision of the Parichalaka and his decision was to be final and binding in all respect. The sale deeds indicate that the vendee was the Thakur Bije Sahadev-Khunta, Marfat Durga Charan Mohanty, Secretary, Nilachala Saraswata Sangh, Puri. A conjoint reading of Exts. E and M and the sale deeds pertaining to conversion of the property in dispute gives a clear picture that the lands were acquired in the name of Thakur Bije Sahadev Khunta, Nilachala Saraswata Sangh, Puri i.e. Central Organisation, which had full control over the same. Ext. J shows the relationship between the

Sakha Organisation and the Kendra Organisation. The Sakha Organisation had sought permission from Kendra for shifting of the "Pathachakra". So it goes without saying that the branch Sangha has no existence without the Kendra.

11. The Trial Court as well as first Appellate Court while deciding the issues have come to the conclusion that the deceased Defendant No. 1 had alienated the suit lands being competent to do so.

12. Law is well settled that in a proceeding u/s 100 of the CPC appraisal of evidence is not permissible. But if the finding is based on no evidence or is based on irrelevant or illegal evidence or it is based on improper admission of inadmissible evidence or in ignorance of any admissible evidence or there is mis-interpretation of a particular document under a mis-conception of law, then such a finding undoubtedly can be interfered with by the Second Appellate Court. Similarly, if on the evidence no reasonable man can come to the conclusion, which has been arrived at by the final Court of fact, then also the Second Appellate Court can interfere with the finding of fact.

13. In the present case, the question of competency of deceased Defendant No. 1 to alienate the property has already been dealt with by the Trial Court as well as First Appellate Court while deciding issue Nos. 4, 5 and 7 issue No. 5 being : Has the Defendant No. 1 any manner of right to sell the suit properties ? This being a question of fact which the Trial Court as well as the First Appellate Court have considered on evidence and have held that Defendant No. 1 had the locus standi to alienate the suit lands, the said finding cannot be interfered with by the Second Appellate Court.

14. As regards the 2nd substantial question of law, at the outset it may be said that the suit was filed by Sri Prafulla Kumar Kar, describing himself as President, BSS Sahadev Khunta for declaration of title, permanent injunction and declaration that the three registered sale deeds pertaining to the sale of the suit property were void. According to the plaintiffs, deceased Defendant No. 1 had no locus standi to sell away the suit property since Sakha Sanghas were independent organisations, so far as their day-today affairs were concerned and they did never function under the control and supervision of Nilachala Saraswata Sangh, Puri. Their specific case was that after the death of Durga Charan Mohanty in the year 1985 there was a split and Nilachala Saraswata Sangh, Puri was bifurcated. This being the pleading in the plaint, the question that fell for consideration before the Trial Court was whether deceased defendant No. 1 was the real Secretary of Nilachala Saraswata Sangh, Puri and whether he had locus standi as the Secretary of Nilachala Saraswata Sangh, Puri to sell away the property as claimed to be under the exclusive ownership of the BSS. So in order to decide the issue whether deceased Defendant No. 1 was competent to sell away the property, the Courts below rightly held that there was inter se relationship between Nilachala Saraswata Sangh, Puri and BSS. The Trial Court has rightly dealt with the evidence which requires no interference, because all these aspects were necessary to be dealt with while deciding the issues involved

in the suit. There remains nothing to be interfered with by this Court.

The Second Appeal is accordingly dismissed being devoid of merit.

15. In course of hearing Misc. Case Nos. 184 of 2001 and 185 of 2001 were filed for substituting the legal heirs of deceased Respondent No. 1 namely Gopinath Singh Samanta and setting aside abatement. The said Gopinath died on 7.12.2000. The applications for setting aside the abatement and condonation of delay had been filed, but by order dated 1.8.2001 it was directed that the applications be placed at the time of hearing of the Second Appeal. As it appears the application for substitution was filed by the appellants through their Counsel, initially Shri Bidyadhar Mishra, and thereafter through Vakalatnama filed by Shri N. Parija. In this appeal the appellants wanted to substitute the legal heirs of Gopinath Singh Samanta. The suit was filed in representative capacity and a fresh affidavit was filed by one Umesh Ch. Samantra only on 16.5.2001 disclosing that he was elected as Secretary of Nilachala Saraswata Sangh, Puri. In my considered opinion there is no necessity of impleading the legal heirs, such as wife, daughter and sons of late Gopinath Singh Samanta as Shri Umesh Ch. Samantra is representing the organisation as Secretary of Nilachala Saraswata Sangh, Puri.

Both the Misc. Cases are thus considered and dismissed.