

(1973) 08 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 889 of 1970

Sudarsan Mohanty and Another

APPELLANT

Vs

Sribatcha Acharya and Others

RESPONDENT

Date of Decision : 02-08-1973

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 68, 9

Citation : (1973) 39 CLT 1267

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

Bench : Division Bench

Advocate : S. Misra 2, for the Appellant; K.N. Sinha, for S. Mohanty, for the Respondent

Judgement

R.N. Misra, J.—This is an application of the opposite parties in a proceeding u/s 68 of the Orissa Hindu Religious Endowments Act (2 of 1952) (hereinafter referred to as the Act) challenging the order of the Additional Assistant Commissioner of Endowments evicting the Petitioner from possession of a bout 43 decimals of land. When the proceeding was taken the Petitioners showed cause contending that they had a lease of this property prior to 1939. In view of the fact that the restriction on transfer was not there at the time when they detained the lease, in an application u/s 68 of the Act they cannot be dispossessed.

2. The Assistant Commissioner passed an order overruling an objection. A revision had been carried by the Petitioner to the Commissioner of Endowments u/s 9 of the Act and the Commissioner had remanded the matter to the Additional Assistant Commissioner for a fresh disposal after, finding out if the document under which the lessees (Petitioners) claimed was a genuine one obviously meaning whether it was of the year 1936 or an ante dated document. Evidence was led in support of the rival claims before the Additional Assistant Commissioner and documents were also produced. The learned Additional Assistant Commissioner has now found that the document said to be the lease

deed is neither genuine nor legally valid. He has, therefore, directed eviction of the Petitioners.

3. The lease is not for agricultural purpose but is in respect of Gharbari land. As it purports to be a permanent lease it was bound to be registered. Since it is an unregistered lease it is not in accordance with law. This aspect of the matter was overlooked by the learned Additional Assistant commissioner. As it is an illegal transaction the Petitioners are entitled to claim possession in their own right from the date they were inducted into possession. There is, however, no plea of adverse possession raised in the written statement and we need not examine that aspect of the matter.

4. Mr. Misra for the Petitioners raises a single contention to the effect that the alienation in question being before the 1939 Act (4 of 1939) came into force the proceeding u/s 68 of the Act is not tenable. Prima facie this seems to be a reasonable contention. The section, as far as relevant, provides:

Where a person has been appointed as trustee or Executive officer of a religious institution...and such person is resisted in, or prevented from, obtaining possession of the religious institution...and properties thereof, by a trustee, office holder or servant of the religious institution who has been dismissed or suspended from his office or is otherwise not entitled to be in possession, or by any person claiming or deriving title from such trustee, office-holder, or servant, other than a person claiming in good faith to be in possession of his own account or on account of some person not being such trustee, office-holder or servant, the Assistant Commissioner concerned shall on application by the person so appointed, direct delivery of possession of the properties in the prescribed manner.

Admittedly the lessees claim possession from a person who has been removed from office. Therefore, the application was maintainable to that extent. But in view of the fact that the property had been transferred away at a time when there was no restriction, until on behalf of the endowment it is established that the Petitioners in the proceeding u/s 68 of the Act can claim title and recover possession the proceeding u/s 68 should not be worked out. We accordingly allow the application of the Petitioners, but declare that it is open to the endowment to recover the property in question by filing a regular suit in the appropriate Court where the question of title and possession can be gone into. The writ application accordingly succeeds. A writ of certiorari shall issue quashing Annexure-12. There would be no order as to costs.

K.B. Panda, J.

5. I agree.