

(1986) 04 OHC CK 0016
In the Orissa High Court
Case No : First Appeal No. 10 of 1973

The Deity Shri Jagannath Swami and Others	APPELLANT
Vs	
Biswanath Panda	RESPONDENT

Date of Decision : 21-04-1986

Acts Referred:

Orissa Hindu Religious Endowments Act, 1951 — Section 69(1)

Citation : (1986) 61 CLT 614 : (1986) 1 OLR 636

Hon'ble Judges : P.C. Misra, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : S.D. Das, for the Appellant; B.B. Ratho, S.K. Das, R.P. Mohapatra and Manoj Misra, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—This appeal arises out of a suit for declaration of this in respect of the properties mentioned in Schedules A, B and C of the plaint and for a further declaration that the defendants have no right to interfere with the possession of the suit land by the plaintiffs.

2. Defendant No. 1 is the deity Sri Jagannath Swamy situated in village Dhunkapada and is represented by the trustees appointed under the Orissa Hindu Religious Endowment Act (hereinafter referred to as the "Act"). There was a proceeding u/s 68 of the Act against the plaintiffs and some others for recovery of possession in respect of the several items of properties including the plaint schedule properties. The plaintiffs in the said proceeding took a stand that the said lands were purchased by their father long long back and they have been in khas possession of the said lands for which the provisions of Section 68 of the Act would not be applicable. The Assistant Commissioner of Endowments ultimately allowed the application u/s 68 of the Act directing delivery of symbolical possession with respect to Schedules A, B and C properties. In a revision u/s 9 of the Act the Commissioner of Endowments found the proceeding u/s 68 of the Act to be inappropriate and held that it is a case to be governed by

Section 25 of the Act. The Managing Trustee filed an application u/s 25 of the Act before the Commissioner of Endowments in which the Commissioner passed an order directing khas possession of the suit lands to be given to the Managing Trustee. The present suit (Title Suit No 64/68) was filed by the plaintiff in the Court of the Subordinate Judge, Aska, contending that they have otherwise perfected title in respect of the suit properties by adverse possession for which their title should be declared. The suit was contested by the defendants. One of the points taken against the maintainability of the suit was that the provisions of Section 69) the Act having not been complied With, the suit should be dismissed. The learned trial Court decided the said question under issue No. 5 holding that non-clearance of Section 69(1) of the Act would not be fatal to the proceeding Having recorded the finding on other issues in favour of the plaintiffs, he decreed the suit and allowed the reliefs prayed for by the plaintiffs. In this appeal all the findings recorded by the Subordinate Judge have been challenged.

3. At the commencement of hearing of this appeal, learned counsel appearing for the appellants submitted that the impugned judgment and decree are liable to be set aside as the finding of the learned trial Court on issue No. 5 is thoroughly misconceived and in that view of the matter he contended that there is no necessity of going into the merits of the other issuer decided against the appellants. It is an admitted fact that no notice of the suit was given to the Commissioner of Endowments before the commencement of the suit as provided u/s 69(1) of the Act. The learned trial Court held in favour of maintainability of the built on the ground that section 69 requires the Court to issue the notice to the Commissioner of Endowments and non-compliance thereof not being a default on the part of the plaintiffs, the suit could not be dismissed. Secondly, the learned Court was of the view that implication of the Commissioner of Endowments as a pay was only for the purpose for Sub- Section (2) of Section 69, namely, for issuing directions as regards the recovery of the cost and expenses of the litigation and not for any other purposes. His conclusion was, therefore, that non-compliance of the provisions of Section 69(1) of the Act would not be fatal to the proceeding. The aforesaid reasonings of the learned trial Court are not supported by any authority. The suit out of which this appeal arises was on the footing that the religious institution was a public one and the provisions of the Orissa Hindu Religious Endowments Act are applicable to the said institution. Section 69(1) of the Act reads as follows:

"69(1). Whenever the trustee of any religious institution is issued in any Civil or Revenue Court in respect of any property belonging to or given, or endowed for the purpose of any religious institution notice of such suit shall be given by the Court concerned to the Commissioner at least a month before commencement of the hearing;.

A plain reading of this section would show that whenever a trustee of any religious institution is sued in respect of any property belonging to or given, or endowed for the purpose of any religious institution notice of such suit shall be

given by the Court concerned to the Commissioner of Endowments at least a month before commencement of the proceeding. The Commissioner of Endowments being the statutory authority to administer and regulate the administration of all religious institutions, it is necessary that he should be heard in every suit concerning the properties belonging to the religious institutions. As has been held in the decision of this Court reported in ILR 1974 Cut 187 (Sureswar Pujhari and others v. Jadumani Pujhari and others), the requirement of Section 69(1) of the Act is mandatory. It, therefore, follows that it admits no exceptions. The Court having found that notice u/s 69(1) of the Act had not been issued. It should have directed the plaintiffs to take notice to the Commissioner of Endowments in conformity with the requirements of Section 69(1) of the Act instead of proceeding with the suit any further.

4. After hearing learned counsel for both parties we are satisfied that the provisions of Section 69(1) of the Act being mandatory in nature and the same having not been complied with, the impugned judgment must be set aside and the suit should proceed from the stage where the notice under the said section was required under law to be issued. We, therefore, remand the suit to the trial Court with a direction to issue notice to the Commissioner of Endowments in conformity with the requirements of Section 69(1) of the Act and to hear the suit afresh after calling for the parties to adduce further evidence and also to direct the witnesses already examined to be produced in Court for the purpose of cross-examination by the Commissioner of Endowments, if he chooses. The evidence already adduced in the suit shall be deemed to be the evidence after remand subject to further cross-examination by the Commissioner of Endowments, as earlier directed.

5. We would, therefore, allow this appeal with the aforesaid direction. There shall be no order as to costs.

D.P. Mohapatra, J.

6. I agree.