
(2025) 04 OHC CK 1402
In the Orissa High Court
Case No : Writ Petition (C) No. 8870 Of 2012

Upendra Prasad Nayak

APPELLANT

Vs

Sri Sri Madhabjew Thakur And Others Vs

RESPONDENT

Date of Decision : 10-04-2025

Acts Referred:

Constitution of India, 1950 — Article 226, 227

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

Citation : (2025) 04 OHC CK 1402

Hon'ble Judges : S.S. Mishra, J

Bench : Single Bench

Advocate : Dayananda Mohapatra, P. K. Jena

Final Decision : Disposed Of

Judgement

S.S. Mishra, J.

1. A civil suit being C.S. No.162 of 1988 was filed seeking declaration and permanent injunction by the opposite party Nos.1 to 3 to this petition. The present petitioner was impleaded as defendant No.6. The opposite parties (plaintiffs) in the suit sought a declaration that the suit land is a "Debottar" property of the deity (plaintiff No.1), which were sold in favour of Prabhakar and others and consequently sale deeds were executed in favour of the present petitioner (defendant No.6) and other defendant Nos.4 & 5 by Sri Prabhakar and others. They further contended that the said Prabhakar and others from whom the petitioner claimed to have purchased the land had no right, title and interest. The petitioner and other defendants in the written statement took the plea that the suit property is not Debottar, rather it belongs to the private deity. Therefore, the sale deed in their favour is valid. They questioned the very maintainability of the suit.

2. On 27.06.1996, the learned trial Court decreed the suit in favour of the opposite party Nos.1 to 3. It was declared that the suit land is a Debottar

property, hence, the sale deeds stands in favour of the petitioner (defendant No.6) and other defendants are void. Accordingly, permanent injunction has also been granted restraining the defendants not to disturb the peaceful possession of the plaintiffs. Aggrieved thereby, the present petitioner being defendant No.6 in the suit and other defendants preferred Title Appeal No.49 of 1996 before the learned Additional District Judge, (Fast Track Court-I), Bhadrak. The learned Appellate Court vide its judgment dated 15.06.2006 allowed the appeal on contest and inter alia passed the following order:-

"11. After perusal of the lower Court record and hearing the counsels of both the parties I am satisfied that the provision of Section 69(1) of the Act being mandatory in nature and having not been complied with the impugned order 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. Therefore, the suit is remanded to Court of the learned Addl. Civil Judge (Junior Division), Basudebpur with a direction to issue notice to the Commissioner of Endowments, Orissa in conformity with the mandatory requirements of Sec.69(1) of the Act and to hear the suit afresh after calling upon the parties to adduce further evidence and also 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. As the parties are given opportunity to adduce further evidence before the learned lower court, I am not inclined to give any finding unacceptability of additional evidence."

12. Accordingly, the appeal is allowed on contest against respondents no.1 to 3 and ex parte against others without costs. The Judgment and decree dated 29.9.96 and 10.6.96 respectively passed by the learned Additional Civil Judge (Junior Division), Basudevapur is hereby set aside. The case is remanded back to the lower Court to dispose of it afresh as indicated above. Parties are directed to appear before the learned lower Court on 10.5.2006 to receive necessary direction."

3. The learned Appellate Court primarily set aside the judgment and decree of the learned trial Court on the ground that under Section 69(1) of the Orissa Hindu Religious Endowments Act, 1951, the Endowment Commissioner is proper and necessary party, whenever the suit property claims to be the "Debottar" property. 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 must be given to the Commissioner of Endowment. However, finding that no notice was issued by the Suit Court to the Commissioner, the aforementioned observation has been made by the learned Appellate Court and remanded the suit to the trial court on the terms as reproduced above.

4. After remand, the Commissioner of Endowment was impleaded as defendant

No.7. The Commissioner chose not to file written statement to the plaint, however, moved an application dated 05.03.2012 seeking permission to cross-examine the P.W.2. The learned Additional Civil Judge (J.D.), Basudevapur vide its order dated 02.04.2012 allowed the application of the newly added defendant No.7 (the Endowment Commissioner). The present petitioner being defendant No.6 vehemently opposed the prayer of the defendant No.7 on the ground that in the absence of written statement being filed, the newly impleaded defendant No.7 has no right to cross-examine the plaintiff's witnesses. The learned trial Court has rejected the objection of defendant No.6 and allowed the application of defendant No.7 inter alia observing as under:-

"4. It is observed from the case record that this suit has been remanded from the appellate Court with a direction to hear the suit afresh after calling upon the parties to adduce further evidence and also direct the witnesses already examined to be produced in the Court for the purpose of cross-examination by the Commissioner of Endowment, if he chooses. The evidence already adduced in this suit shall be deemed to be the evidence after remand subject to further cross examination by the Commissioner of Endowment as earlier directed.

Upon perusal of the order of the appellate Court, it is observed that the parties are to produce the witnesses already been examined for further cross examination by Commissioner of Endowment, who has been impleaded as Def. No. 7. Here P.W.1 has been produced by the plaintiff and the Def. No.7 has sought the permission of the Court to cross examine P.W.1 only. In view of the order of the appellate Court, this Court does not see any reason to refuse the permission for cross examination of P.W.1 by the Commissioner of Endowments. In view of the above facts and circumstances, this Court is inclined to allow the permission to Def. No.7 for cross examination of P.W.1. Hence, the petition is allowed.

Put up on dt. 07.04.12 for cross examination of P.W.1 by Def. No.7."

5. The defendant No.6, the petitioner in the present case has also moved an application dated 07.04.2012 seeking permission of the learned trial Court to allow him to cross-examine the plaintiff. The learned Additional Civil Judge (J.D.), Basudevapur vide its order dated 16.04.2012 has rejected the prayer of the petitioner inter alia observing as under:-

"4. Upon perusal of the order of the Appellate Court, it is observed that the case has been remanded with a specific direction, which reads as follows "the witnesses already examined are directed to be produced in the Court for the purpose of cross examination by the Commissioner of endowments, if he chooses. The evidence already adduced in this suit shall deemed to be the evidence after remand subject to further cross examination by the Commissioner of Endowment as earlier directed."

Upon perusal of the order of the Appellate Court, this Court observes that the petitioner does not have any scope to cross examine the plaintiff at this stage. As

per the order of the appellate Court, the commissioner of the Endowment is only entitled to cross examine the witnesses already examined in this case, if he so chooses. In view of the above facts and circumstances, this Court is not inclined to allow the petition filed by Def. No.6. Hence, the petition stands rejected being devoid of merit.”

6. The petitioner has filed the present Writ Petition challenging both the orders dated 02.04.2012 and 16.04.2012 passed by the learned Additional Civil Judge (J.D.), Basudevpur in C.S. No.162 of 1988. The matter was taken up for hearing on 06.07.2012. Notice was issued and the trial Court proceeding in C.S. Case No.162 of 1988 pending before the learned Additional Civil Judge (Junior Division), Basudevpur has been stayed. Since then, the present Writ Petition is pending.

7. Heard Mr. Dayananda Mohapatra, learned Senior Counsel for the petitioner and Mr. Jena, learned counsel for the opposite party No.2 at length.

8. I have perused the documents placed before this Court and also carefully gone through the judgment dated 15.06.2006 passed by the learned Additional District Judge, (Fast Track Court-I), Bhadrak in Title Appeal No.49 of 1996. The entire case revolving around the limited relegation order passed by the learned Appellate Court and after the remand the jurisdiction of the learned trial court. It is an admitted position that the learned Appellate Court's judgment dated 15.06.2006 has attained finality as no one has challenged the same.

Firstly dealing with the order dated 02.04.2012 passed by the learned Additional Civil Judge (J.D.), Basudevpur in C.S. No.162 of 1988, wherein the present petitioner has objected the prayer made by the newly added defendant No.7 (Commissioner of Endowment) seeking permission to cross-examine P.W.2 is concerned. It is well settled proposition of law that even without filing the written statement by the defendant No.7, the defendant No.7 is well within his right to cross-examine the plaintiff witnesses. Although in the absence of specific pleading by the defendant No.7 by filing written statement, he cannot lead his own evidence but cross-examining the plaintiff's evidence is not forbidden under law. Therefore, the learned trial Court has rightly allowed the prayer of the defendant No.7 (Commissioner of Endowment) by overruling the objection of the petitioner/defendant No.6. Moreover, in the remand order passed by the learned Appellate Court, the Endowment Commissioner has been extended the right to cross-examine the witnesses. Therefore, no fault could be found from the order dated 02.04.2012.

In so far as the order dated 16.04.2012 is concerned, the learned Additional Civil Judge (J.D.), Basudevpur has rightly rejected the prayer of the present petitioner/defendant No.6 to recall the plaintiff for further cross-examination by him because the learned Appellate Court in the remand order has very specifically observed that “the witnesses already examined are directed to be produced in the Court for the purpose of cross-examination by the Endowment

Commissioner alone". However, the intend of the application of the petitioner appears to be to adduce fresh evidence by expanding the scope of remand order. The prayer of the petitioner/defendant No.6 particularly cannot be allowed as the Endowment Commissioner (defendant No.7) has not even filed the written statement. In the absence of fresh pleading, the scope of bringing further evidence to cover up the gap was not the intention of the remand order passed by the learned Appellate Court. Therefore, I find no reason to interfere with the said order as well.

9. In that view of the matter, no interference is called for to upset the orders dated 02.04.2012 and 16.04.2012 passed by the learned Additional Civil Judge (J.D.), Basudevpur in C.S. No.162 of 1988. Accordingly the same are affirmed. However, depending upon the evidence that may come on record after the cross-examination of the witnesses by the Endowment Commissioner, the parties may move appropriate application to lead their evidence. If such application is moved, the learned trial Court shall deal with the same in accordance with law.

10. The suit was filed way back in the year 1988 and since then it is elongating. After the impugned order passed by the learned trial Court and pursuant to the remand judgment dated 15.06.2006, the matter is pending before this Court since 2012. The stay of the further suit proceeding is operating since 06.07.2012. Keeping in view the aforementioned, I am of the opinion that the learned trial Court shall do well to see that the trial of the case is concluded as expeditiously as possible preferably within a period of six months hence.

11. With this observation, the Writ Petition stands disposed of...

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