

(1946) 11 PAT CK 0014
In the Patna High Court

Upendra Prosad Padhi and Another

APPELLANT

Vs

Sri Sri Akhandaleswar Mahadeb and Others

RESPONDENT

Date of Decision : 18-11-1946

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92

Citation : AIR 1948 Patna 133

Hon'ble Judges : Ray, J

Bench : Division Bench

Judgement

Ray, J.—This second appeal is by the defendants in a suit for recovery of certain gifts (presents) made by devotees to Sri Sri Akhandaleswar Mahadeb whose endowment is under the management of the committee constituted by the plaintiffs 1, 2 and 3,

2. The only point that has been discussed in second appeal is that in view of certain provisions of law to be mentioned presently, the plaintiffs have no locus standi to bring the suit, nor is it maintainable. The sections relied upon are Sections 27(4), 57, 54 and 5(2), Orissa Hindu Religious Endowments Act (4) [iv] of 1939). Admittedly, plaintiffs 1, 2 and 3 are members of a committee appointed under a scheme framed u/s 92, Civil P.C., by the District Judge of Cuttack. It is argued that non-hereditary trustees as they are, their office by virtue of their previous appointment enures only for one year from the date of the commencement of the Orissa Hindu Religious Endowments Act. The Act commenced on 4-11-1939, and, therefore, they cannot be considered to be in office after 4-11-1940, and thus they are not entitled to maintain the present suit which was filed in the month of May 1941. Secondly, it is argued that they either as trustees or as members of the public having interest in the endowment could not maintain a suit to recover possession of properties as the disputed properties are comprised in a Hindu Religious Endowment without consent of the Commissioner. Even considered as a proceeding pending at the commencement of this Act, it is valid only so far as it is not inconsistent with the provisions of

this Act. This last argument was, however, abandoned when it was pointed out to the learned advocate appearing for the appellant that the continuing scheme u/s 92 does not amount to a proceeding. If the Sections 27 and 54 stood alone, the appellants should certainly have been entitled to succeed. But Section 57 operates to nullify the effects of the aforesaid sections to a very large extent. Section 57 reads as follows:

Where the administration of a religious endowment is governed by any scheme settled u/s 92, Civil P.C., 1908, such scheme shall, notwithstanding any provisions of this Act which may be inconsistent with the provisions of such scheme, be deemed to be a scheme settled under this Act, and such scheme may be modified or cancelled in the manner provided by this Act.

3. If in the scheme framed u/s 92, Civil P.C. by the District Judge he appointed the members of the committee as life members--as it is admitted that they have been so appointed--their tenure of office cannot come to an end even though it is inconsistent with the provisions of Section 27(4). Therefore, they shall be deemed to have been in office until the scheme is modified or cancelled in the manner provided by this Act.

4. The next question that arises is whether as members of the committee they can maintain the suit without having obtained the consent of the Commissioner.

5. There are two answers to this contention. The first is that the members of the committee having had the right to institute suits to recover properties from the hands of either trespassers or persons claiming on their own behalf, some sort of right to the custody of the endowment properties, this right will continue to lie in them notwithstanding anything in the provisions of Section 54 to the contrary. The second answer is that Section 54 does not appear to apply to existing trustees. The section does not make any distinction between hereditary trustees and non-hereditary trustees. The extravagance of the contention can be exposed by taking a small but right illustration into consideration. Suppose, the hereditary trustee of a Math has, in course of his management of the Math properties, to institute suits for recovery of endowment properties either from the hands of trespassers or from the hands of one who claims to have superior right as Mahanth of the Math. Is it at all necessary that in order to maintain such a suit he will have to obtain the previous consent of the Commissioner? The answer to this question must be in the negative. The section is framed so as to confer certain new rights upon certain persons who otherwise have not got them, to institute suits for the benefit or in the interest of endowments. The section read as a whole is meant to replace Sections 92 and 93, Civil P.C. The provision is enabling and at the same time is not exhaustive. It cannot be said that it is only those persons who have been mentioned or referred to in Section 54 and under circumstances defined therein can maintain a suit and nobody else. It is the common law that whenever any property is vested in any individual, he either as owner or as possessor or as manager of such properties has a right to maintain actions for preservation, restoration or due upkeep of the said properties. If any

law of any Legislature is meant to take away such a right, the provision contemplating to take them away must be very clear, unambiguous and express. In my judgment, members of the committee do not fall within the category of persons having interest and having had to obtain previous consent within the ambits of Section 54 of the Act. It has also been argued by Mr. Mahanty appearing for the respondents that this is not a suit for recovery of possession of property comprised in a religious endowment. He contends that this is a property Which is acquired from time to time by daily administration of the endowment and it cannot be said to be included within the very wide words "property comprised in a religious endowment" occurring in Section 54(1)(a). I do not feel the necessity of expressing any opinion on this last argument advanced by him.

6. In the result, I find no substance in the contention in support of pleas in bar of the plaintiffs' suit. In my judgment, the members of the committee have got a right of maintaining the suit without any consent from the Commissioner, and they are entitled to continue in the office until the Commissioner, in exercise of his powers under the Act and in accordance with the last part of Section 67 of the Act, removes them or limits their tenure in any possible way. In this view of the matter, the appeal fails and is dismissed with costs.