

HEADING OF DECISION IN CIVIL SUITS

IN THE COURT OF 1st ADDL.SENIOR CIVIL JUDGE,
BHUBANESWAR,

PRESENT:- *Pranab Kumar Routray, LL.,M,*
1st Addl. Senior Civil Judge,
Bhubaneswar.

C.S. No.311/2007

1. Nilakantheswar Dev, the Village Public Deity installed in village-Nanput, P.O.-Retanga, P.S.- Khandagiri, District-Khurdha, the deity being perpetual minor represented through the villagers.
2. Bishnu Charan Badajena, aged about 60(sixty) years S/o. Late Maguni Badajena, of Village-Narasinghapur, Samil-Nanput, P.O.-Retanga, P.S.-Khandagiri, District-Khurda.
3. Prafulla Kumar Pratapsingh, aged about 44(forty four) years, S/o. Baikuntha Pratapsingh of Village- Nanput, P.O.- Retanga, P.S.- Khandagiri, District- Khurda.
4. Surendranath Jagadev, aged about 48 (Forty eight) years, S/o. Late Jagabandhu Baliarsingh of Vill.- Narasinghapur, Samili- Nanput, P.O.- Retanga, P.S.- Khandagiri, District-Khurdha.
5. Nilakantha Paikeray, aged about 35 (Thirty five) years, S/o. Mahendra Paikeray of Village- Nanput, P.O.- Retanga, P.S.- Khandagiri, District-Khurdha. Sl. No.2 to 5 (two to five) representing the villagers of village-Nanput for the deity U/Or.1, Rule-8, C.P.C.

... **Plaintiffs**

-Versus-

1. Sri Sudarshan Routaray, aged about 46 (Forty six) years,
2. Sri Dushasan Routaray, aged about 36 (Thirty six) years,

Both are sons of Late Pathani Routaray of village-Nanput,
P.O.- Retanga, P.S.- Khandagiri, District- Khurdha.

3. Rashmi Ranjan Moharathy, aged about 31 (Thirty one) years,
S/o. Bhikari Charan Moharathy of Village- Satakalia,
P.O.- Salanga, P.S.-Nimapara, District-Puri.
4. Bijaylaxmi Kuanar, aged about 42 (Forty two) years,
W/o. Rabindra Kumar Kuanar (Nuagaon),
P.O.- Dasarathpur, P.S.- Mangalpur, Dist.Jajpur,
at present- VIB-1/2 Kharvel Nagar, Unit-III,
P.O./P.S.- Kharvel Nagar, Bhubaneswar, Dist.Khurdha.
5. Sudharani Choudhury, aged 33 (Thirty three) years,
W/o. Nageswar Choudhury,
C/o. B. Prakash Rao, resident of Flat No.D-202,
Second Floor, Manorama Enclave, Satya Nagar,
P.O.- Satya Nagar, P.S.- Satya Nagar, BBSR.,
District- Khurdha.
6. Smt. Jyotirmayee Behuria, aged 33 (Thirty three) years,
W/o. Ramesh Chandra Behuria,
resident of Udayapur (Nuagaon), P.O.- Dasarathpur,
P.S.- Mangalpur, District- Jajpur,
At present- Qrs. No.A/186, Sector-19 (Rourkela),
District-Sundargarh.
7. Sanjeev Kumar Sahoo, aged about 31 (Thirty one),
S/o. Sri Giridhari Sahoo, resident of South Canal Road,
Via- Simulia, P.O.- Simulia, P.S.- Simulia,
District- Balasore, At present- 509, Klowa CIR Unit-102,
Naperville, II-60565 (USA).
8. Smt. Brundabati Patra, aged 33 (Thirty three),
W/o. Nabalok Patra, Resident of Qrs.No.D/392,
Koel Nagar, Rourkela, P.S.-Sector-19,
District- Sundargarh, At Present-VIB-112, Kharvel Nagar,
Unit-III, P.O./P.S.- Kharvel Nagar, Bhubaneswar,
District- Khurdha.
9. Mrs. Sunita Rout, aged about 24 years,
W/o. Bharat Rout,
At/P.O. Sunamuhin, P.S.Odogaon,
Dist.Nayagarh, at present C/o. Panchanan Kanan,
C-423, Badagada Upper Sahi, P.S.Badagada,
P.O.-Bhubaneswar, Dist.Khurda.

... **Defendants.**

COUNSEL APPEARED

For Plaintiffs : Sri B.P. Pattnaik & Associates
For Defendant No.5 : Sri D.K. Parida & Associates
For Defendant Nos.1 to 4
& Defendant nos. 6 to 9 : Ex parte

DATE OF CONCLUSION OF ARGUMENT : 15-07-2014
DATE OF JUDGMENT : 21-07-2014

JUDGMENT

This is a suit for declaration of right, title and interest over the schedule of property described in the plaint hereinafter referred to as suit property, confirmation of possession, permanent injunction and declaration of sale deeds executed in favour of Defendant nos.3 to 9 by Defendant nos.1 and 2 as null and void.

2. Case of the plaintiffs in nut-shell is that the Plaintiff no.1, Nilakantheswar Dev bije at Village Nanput, P.O.Retang, Dist.Khurda is a public deity religiously worshiped by public at large including the other plaintiffs. The said deity has movable and immovable properties including the suit property recorded in the name of the deity Plaintiff no.1 Marfat Pathani Routaray in the last Settlement R.O.R finally published in 1962. The said Pathani Routaray died leaving behind his sons namely Defendant nos.1 and 2 as his legal heirs who have executed a Registered General Power of Attorney vide no.559 dtd.07-11-2006 in favour of Citicon Engineers, Odisha Pvt. Ltd. with power to sell away the property even though deity Plaintiff no.1 has valid right,

title, interest and possession over the said property. By virtue of the Power of Attorney, the Managing Director of Citicon Engineers has made the suit land into smaller plots and have illegally sold away to Defendant nos.3 to 9 without knowledge of the villagers. It is the further case of the plaintiffs that prior sanction of Commissioner of Endowments has not been obtained by the defendants as required U/s.19 (a) of the Orissa Hindu Religious Endowments Act (in short O.H.R.E Act) to sell the suit property for which the sale deeds are not valid. It is further averred that there was no delivery of possession of suit property to the vendees but on 20-02-2007 the defendants came to the disputed plot and threatened the plaintiffs not to enter into the said plot on the ground that they have purchased the same. The plaintiffs applied for certified copy of the documents and ascertained the truth about such sale. Hence, the suit.

3. Defendant nos.1,2, 4 and 8 though appeared but have not filed their written statement and subsequently have been set ex parte. Defendant nos.6,7 and 9 have not appeared and set ex parte. The only contesting defendant is defendant no.5 who has not filed written statement but has filed objection in the interlocutory application bearing no.252/207 and filed a memo to treat his objection as written statement. He has challenged the suit on maintainability, cause of action, valuation and also on the jurisdiction of this Court to decide the dispute. Regarding jurisdiction, it is stated that the Collector and Endowment Commissioner are the competent authority to adjudicate this matter. It is further averred that Defendant nos.1 and 2 being sons of Pathani Routaray have validly executed Power of Attorney in

favour of Citicon Engineers from whom she has purchased the property. The purpose of sell was to meet the expenses of Seva-Puja of deity and to develop the property of the deity. It is specifically pleaded that after purchase of the property she has all right, title and interest over the same and she has also taken possession by constructing boundary wall around her purchased plot. Hence, prayed for dismissal of the suit.

On notice, as required u/s.69 of Odisha Hindu Religious Endowments Act, Commissioner of Endowments, Odisha appeared and filed written statement averring therein that Plaintiff no.1 is a public deity and the plaintiffs are to safeguard the properties of the deity. The suit property is recorded in the name of the deity Marfat Pathani Routaray but the Marfatdar is only to manage the property on behalf of the deity having no right to transfer the same. It is further stated that Defendant nos.1 and 2 have no right to execute General Power of Attorney in favour of anyone to sell away the property and these defendants alongwith the Power of Attorney Holder have made fraud by not mentioning the name of the deity in the sale deeds. The sale deeds executed are void ab initio as it has been made in contravention of O.H.R.E Act. It is further stated that on receipt of information of such illegal sell, Plaintiff no.2 has been directed to file case U/s.25 of O.H.R.E Act, 1951 in the Court of Commissioner of Endowments for recovery of the lands of the deity. In view of the above, it is stated that the sale deeds be declared null and void.

4. On the basis the aforesaid rival pleadings the following issues have been settled.

ISSUES

1. Whether the suit is maintainable ?
2. Whether there is cause of action to file the suit ?
3. Whether the suit is under valued ?
4. Whether the Plaintiff no.1 has right, title, interest and possession over the suit property ?
5. Whether the plaintiff is entitled for order for permanent injunction against the defendants ?
6. Whether Defendant nos.3 to 9 acquire right, title and interest on the basis of Registered Sale Deeds executed in favour of them by the Power of Attorney Holder of Defendant nos.1 and 2 ?

5. In order to prove the case the plaintiffs have examined three witnesses in all from their side of whom P.W.1 is the plaintiff No.2 ; P.W.2 is one Padma Charan Subudhi and P.W.3 is one Purna Chandra Samantaray. The plaintiffs have produced and proved the R.O.R of the suit property vide Ext.1 ; Seven nos. of Registered Sale Deeds vide Exts.2 to 8 ; Certified copy of General Power of Attorney executed by Defendant nos.1 and 2 in favour of Citicon Engineers Odisha Pvt. Ltd vide Ext.9 ; One copy of Daily Newspaper ' Dharitri ' of dtd.16-01-2011 in compliance to

provision U/O 1 Rule 8 of C.P.C vide Ext.10 ; Exts.10/a and 10/b are the Money receipts towards newspaper publication ; Ext.11 is the information supplied under RTI by the Deputy Commissioner Endowments, Odisha to the Plaintiff no.2.

On the other hand, the contesting defendant no.5 has examined herself as the sole witness and no document has been brought into record from her side.

With the aforesaid evidence both oral and documentary the issues as framed are to be answered.

FINDINGS

6. Issue nos.4 and 6

These two issues being the principal issues and also inter related, hence, taken up together at first. It is the case of the plaintiffs that the suit property belongs to the deity but the father of Defendant nos.1 and 2 was the Marfatdar of the property having no right to alienate the same but the Defendant nos.1 and 2 being the legal heirs and successors of Marfatdar Pathani Routaray illegally alienated the property through their Power of Attorney Holder to Defendant nos.3 to 9. The plaintiffs are claiming the sale deeds as null and void. Whereas Defendant no.5 is saying that she has validly purchased her plot which is a portion of the suit property and has taken possession. Commissioner of Endowments, Odisha has taken the stand that the alleged sale deeds are void ab initio as the same have been executed in contravention to Section 19 of O.H.R.E Act.

7. First it is to be examined whether the Plaintiff no.1 is a public deity and the suit property is endowment property. All the three witnesses examined from the side of plaintiffs have deposed that deity Nilakantheswar Dev ' Mahadev ' has been installed in Village Nanput and is worshiped by the villagers and is a public deity and the suit property also belongs to the deity which is managed by the Trust Board appointed by Endowment Department. Ext.11 is the information supplied under RTI Act by the Deputy Commissioner of Endowments- cum-Public Information Officer to Bishnu Charan Badajena (Plaintiff no.2) reveals that Nilakantheswar Mahadev at Nanput is one of the indexed institution bearing Index no.1245-P/118N-P and the property situated in the Mouza Pandiapada appertaining to Khata No.92, Plot No.68, area Ac.0.915 decimals is endowment property and it stands recorded in the name of deity. In addition to Ext.11, the plaintiffs have filed the R.O.R of the suit property under Ext.1 which reveals that the suit land stands recorded in the name of Nilakantheswar Dev bije Nanput, its Kisam is Sarada 3 and area is Ac.0.915 decimals.

There is no challenge by the defendants that Plaintiff no.1 is not a public deity or the suit property is not endowment property. Law is well settled that every deity is presumed to be public deity unless and until the contrary is proved. In the case at hand, none of the defendants have brought any material to substantiate that the Plaintiff no.1 deity is private deity rather Ext.11 clearly speaks that the said deity is an indexed institution which means its management is under the control of

Commissioner of Endowments. Considering Exts.1 and 11 it is also gathered that the suit property belong to Plaintiff no.1 deity but as per Ext.1 one Pathani Routaray is the Marfatdar of the property.

8. Now question comes whether Defendant nos.1 and 2 being the legal heirs and successors of Pathani Routaray have right to alienate the suit property. In this context, learned counsel for the plaintiffs invited attention of this Court to Section 19 of O.H.R.E Act which speaks that ' no transfer ' by exchange, sale or mortgage and no lease for a term exceeding five years of any immovable property belonging to, or given or endowed for the purpose of, any religious institution, shall be made unless it is sanctioned by the Commissioner of Endowments as being necessary or beneficial to the institution and no such transfer shall be valid or operative unless it is so sanctioned. Exts.2 to 8 are the certified copies of Registered Sale Deeds executed by Citicon Engineers Pvt. Ltd. being the Power of Attorney Holder of Defendant nos.1 and 2 in favour of Defendant nos.3 to 9 alienating the suit land by making the suit land into pieces in favour of each of these defendants and in total has alienated the entire suit property. In the case at hand the written statement of Commissioner of Endowments itself shows that no sanction has been accorded for transfer of the suit land. None of the defendants have filed any sanction order of Commissioner of Endowments in support of such transfer. Rather defendant no.5 is taking the plea that Defendant nos.1 and 2 have validly executed Power of Attorney in favour of Citicon Engineers Pvt. Ltd. Odisha who rightly transferred the property in her favour. Considering the provision of law, the irresistible conclusion is that the alienation of the suit land by

Defendant nos.1 and 2 through the Power of Attorney Holder in favour of Defendant nos.3 to 9 is certainly not valid and inoperative in the eye of law and no title would pass in favour of the said defendants since the property belongs to the deity Plaintiff no.1.

In view of the aforesaid discussion, it is held that the Plaintiff no.1 has right, title and interest over the suit property whereas Defendant nos.3 to 9 do not acquire right, title and interest over the suit property on the basis of the Registered Sale Deeds executed in their favour.

So far as possession over the suit land is concerned, there is evidence on record that the suit land is still in possession of the villagers of the suit Mouza and P.W.2 is cultivating the land since 2002 on behalf of Plaintiff no.1 being entrusted by the Village Committee.

These two issues are answered accordingly.

9. **Issue no.5**

When it is already held in the above issues that the Plaintiff no.1 has right, title, interest and possession over the suit property and the defendants have no right, title and interest over the same, the plaintiff is entitled for relief of permanent injunction restraining the defendants to come over the suit land or change the nature of the land and not to make any construction thereover.

10. **Issue no.3**

Defendant no.5 has challenged the suit on its valuation. It is claimed by her that the plaintiffs have not filed appropriate Court fees on valuation of the sale deeds. It is argued

on behalf of the plaintiff that this being a suit for declaration of the sale deeds as not valid ones and the plaintiffs have not prayed for cancellation of sale deeds, therefore, Court fee need not to be paid on the sale consideration mentioned in the sale deeds. In support of this contention, learned counsel relied on the decision reported in 2010 SAR (Civil) 402 Supreme Court between Suhrid Singh @ Sardool Singh vrs. Randhir Singh and others wherein it is held by Hon'ble Apex Court that :

“Court Fees- Difference between a prayer for cancellation and declaration in regard to a deed of transfer-Where the executant of deed wants it to be annulled, he has to seek cancellation of the deed- But if a non-executant seeks annulment of a deed, he has to seek declaration that deed is invalid that it is not binding on him-Plaintiff in the suit was not the executant of the sale deeds- Court fee was not computable on the sale consideration mentioned in the sale deed.”

In the case at hand, none of the plaintiffs are executants of any of the sale deeds. They have not sought for cancellation of the sale deeds. They have sought for declaration that the sale deeds are invalid ones. Therefore, in view of ratio of the aforesaid case Court fee is not computable on the sale consideration mentioned in the sale deeds under Exts.2 to 8. This being a suit for declaration and for permanent injunction, the suit is not under valued. This issue is answered accordingly in the negative i.e. against the defendants.

11. **Issue nos.1 and 2**

Defendant no.5 has challenged the suit on its maintainability on the ground that the plaintiffs have not approached the proper Court for adjudication of the matter. As per the said defendant, the Collector or Endowment Commissioner are the competent authority to adjudicate this matter. In course of argument learned counsel for the plaintiffs and learned counsel for the Endowment Commissioner contended that the Commissioner of Endowments can only take steps U/s. 25 of the O.H.R.E Act to take recovery of possession of any immovable land unlawfully alienated. It is also submitted that steps have already been taken directing the Trustee plaintiff no.2 to take step U/s. 25 of the said Act. But when the plaintiffs have claimed for declaration of the sale deeds to be null and void in respect of sale of immovable property of any deity the worshippers can approach Civil Courts and therefore the suit is maintainable.

Section 25 of O.H.R.E Act speaks that in case of any alienation, in contravention of Section 19 of this Act or in case of unauthorised occupation of any immovable property belonging to or given or endowed for the purpose of any religious institution, the Commissioner may, after summary enquiry and on being satisfied that any such property has been so alienated or unauthorisedly occupied send a requisition to the Collector of the District to deliver possession of the same to the trustee of the institution or a person discharging the function of the said trustee. In the said section it is also said that the Collector shall exercise his powers under this Section and shall be guided by rules under this Act. It is further said in the said Section that any person aggrieved

by the action of the Collector may institute a suit in the Civil Court to establish his rights.

In consideration of Section 25 of the O.H.R.E Act it is safely held that steps can be taken by the Commissioner of Endowments after summary enquiry for recovery of immovable trust property in case of unlawfully alienated or unauthorisedly occupied. In the case at hand, the plaintiffs are challenging the sale deeds executed by the legal heirs of the Marfatdar of property of a deity to be null and void. Therefore, this Court has jurisdiction to adjudicate the matter. There is ample evidence on record that the plaintiffs are the worshipers of plaintiff no.1 deity. It is well settled law that the true beneficiaries of religious endowments are not the idols but the worshipers and the worshipers have a right to file suit to set aside transfer of immovable property comprising in a Hindu religious or charitable endowments made by a Manager thereof for valuable consideration (AIR 1993 SC 1145). Hence, the suit filed by the plaintiffs who are the worshipers is maintainable. It is on record that when the defendant came to the disputed plot and threatened the plaintiffs not to enter into the possession on the ground that they have purchased the suit property, the plaintiffs resisted such act of the defendant and approached this Court. Hence, there is cause of action to file the suit. These two issues are answered accordingly.

Hence, it is ordered.

ORDER

The suit be and the same is decreed on contest against Defendant no.5 and ex parte against the other Defendants. It is hereby declared that the Plaintiff no.1 Nilakantheswar Dev baje at Nanput has right, title, interest and possession over the suit property and the sale deeds executed in favour of defendant nos.3 to 9 through Registered Sale Deeds vide nos.932 dtd.17-01-2007, 8484 dtd.13-11-2006, 8965 dtd.28-11-2006, 8485 dtd.13-11-2006, 933 dtd.17-01-2007, 8987 dtd.18-11-2006 and 9883 dtd.18-12-2006 respectively are null and void. The defendants are hereby permanently restrained to enter upon the suit property or change the nature of the land or to make any construction on it.

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

The judgment is typed to my dictation by the typist attached to this Court directly on the computer provided under E-Court Project, corrected and pronounced by me in the open Court today i.e. on the 21st day of July, 2014 under my seal and signature.

***1st. Addl. Senior Civil Judge,
Bhubaneswar***

List of Witnesses examined for the Plaintiffs:

- P.W.1 : Sri Bishnu Charan Badajena ;
P.W.2: Sri Padma Charan Subudhi ;
P.W.3: Sri Purna Chandra Samantray

List of Witnesses examined for the Defendants :

D.W.1: Smt. Sudharani Choudhury ;

List of Documents marked as Exhibits for the Plaintiffs:

- Ext.1: R.O.R of Khata no.92, Mouza-Pandiapada ;
Ext.2: R.S.D No.8484/06 dtd.13-11-2006 ;
Ext.3: R.S.D No.8965 dt.28-11-2006 ;
Ext.4: R.S.D No.8485 dt.13-11-2006 ;
Ext.5: R.S.D No.8987 dt.18-11-2006 ;
Ext.6: R.S.D No.933 dt.17-01-2007 ;
Ext.7: R.S.D No.9883 dt.18-12-2006 ;
Ext.8: R.S.D No.932 dt.17-01-2007 ;
Ext.9: Registered Power of Attorney No.8353
dt.07-11-2006 ;
Ext.10: Money Receipt ;
Ext.10/a
& 10/b: Money Receipts ;
Ext.11: Summon published in ' The Dharitri ' ;
Ext.12: Information obtained from Endowment Commissioner
through RTI.

List of Documents marked as Exhibits for the Defendants :

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*1st. Addl. Senior Civil Judge,
Bhubaneswar*