

IN THE COURT OF THE ADDL. DISTRICT JUDGE, BHUBANESWAR.

PRRESENT:-

Shri I.K. Das, LLB,
Addl. District Judge, Bhubaneswar.

FAO No. 8/38 of 2013-07

(Arising out of order dtd. 16.3.07 passed by learned
Civil Judge, Jr. Divn., Bhubaneswar in CS No. 315/06)

Bhubaneswar Kalibari Samiti
Represented through General Secretary
Samir Kumar Bhoumik, At: Kali Temple Road
A/13, Ashok Nagar, Unit -III, Bhubaneswar, Dist: Khurda

... Appellant

Vrs.

1. Mukunda Murari Maity, aged about 70 years
Ram Krishna Decorators, 14 Ashok Nagar
Bhubaneswar, Dist: Khurda
2. Partha Kumar Das, aged about 51 years
S/o: Not Known, Ice Factory Line,
PO: Budheswari, Bhubaneswar, Dist: Khurda
3. Asim Kumar Chakraborty, aged about 60 years
S/o: Not Known, Qr. No. V/R-5/3, Unit-I
Bhubaneswar
4. Soumitra Chakravorty, aged about 35 years (Dead)
S/o: Late Santosh Chakraborty, C/o: Partha Kumar Das
Ice Factory Line, PO: Budheswari, Bhubaneswar
5. Kamalesh Sinha, aged about 56 years
S/o: Not Known, Flat No. 401, Akashdeep Apartment
Vivekananda Marg, Bhubaneswar
6. Tapan Kumar Raha, aged about 58 years
S/o: Not Known, Gems Palace Apartment
Saheed Nagar, Bhubaneswar

... Respondents.

Advocate for the appellant:-
Advocate for the Respondents-

Sri H. Routray & Associates
Sri A. Mohanty & Associates

Date of argument- Dt.13.11.14

Date of judgment- Dt.24.11.14

JUDGMENT

1) The appellant in this appeal was plaintiff-petitioner in the Court of Civil Judge, Jr. Divn., BBSR in CS No. 315/06 and IA No. 79/06. Respondents were defendants-Opp. Parties in the said Civil suit and IA petition before the learned Court below. All the parties are executive body members under a registered society namely, "Bhubaneswar Kalibadi Samiti" and the petitioner was the Secretary of the Samiti. On the averments that the O.Ps have been nominated as members of Executive Committee without consulting the general body and they are creating disturbance in the day to day function of the Samiti, the petitioner filed the IA petition U/o 39 R-1 & 2 CPC to injunct them from creating any disturbance and to collect any fund for Kali Puja for the year 2006.

2. The O.Ps filed their objection that they are duly elected members of the Samiti and the petitioner has no locus standie to file such a case. It was further averred that the petitioner with malafiede intention has filed the suit and the IA petition for his personal wrongful gain.

3. Learned Civil Judge, Jr. Division vide order dtd. 16.3.07 dismissed the IA petition basically on the ground that while the petitioner prayed for injunction against the O.Ps for interfering with the management of Kali Puja for the year 2006, the order was passed much later to the said Puja and therefore, by the order passed by the learned Court below, the petition was already infructuous. Further, it was observed that the O.Ps being elected members of Samiti no injunction order can be passed prohibiting them from interfering with the management of Kali Puja for the year 2006. However, the petitioner being the appellant filed the appeal challenging the impugned order on the IA petition and accordingly, the appeal is heard from both the sides.

4. During the course of hearing, I find learned lower Court has weighed the case of the O.Ps more in respect of prima facie case, balance of convenience and irreparable loss than that of the petitioner. It is categorically observed that the O.Ps being elected members of the Samiti, any function by them under the bye

law of the Samiti cannot be prohibited in any manner unless it is illegal in the eye of law. Further, when any order passed by the Court if will not be relevant to the facts of the case, it will also be not appreciable to pass such order. The prayer of the petitioner was only for injunction against O.Ps in respect of management of Kali Puja in the year 2006. The matter is pretty old and is infructuous completely at this stage. Therefore, I do not find any illegality or irregularity in the order passed by the learned lower Court. Hence, ordered.

ORDER

The FAO is dismissed on contest but in the circumstance, without cost. The order passed by the learned Civil Judge, Jr. Divn., Bhubaneswar is hereby confirmed.

Pronounced in the open Court today this the 24th day of November, 2014
Dictated and Corrected by me.

Addl. District Judge, Bhubaneswar

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