

**IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE –CUM-
SPECIAL JUDGE, CBI-II, BHUBANESWAR.**

PRESENT:

Dr.A.K.Mishra,
Addl. District Judge –cum-
Special Judge, CBI-II, Bhubaneswar.

R.F.A. No. 6/21 of 2015.

(Arising out of Judgment and decree dated
23.2.2015 passed by the 2nd Addl. Senior
Civil Judge, Bhubaneswar in C.S. No.
149/454 of 2010/2009)

1. Babaji Charan Behera, aged about 66 years,
2. Sadhu Charan Behera, aged about 56 years,
3. Madhusudan Behera (Dead)
 - (a) Laxmi Behera, aged about 43 years, w/o. Madhusudan Behera,
 - (b) Bikram Behera, aged about 24 years, s/o. Madhusudan Behera,
 - (c) Sangram Behera, aged about 22 years, s/o. Madhusudan Behera,
4. Jadumani Behera, aged about 42 years, s/o. late Gouranga Behera,

All are of vill. Keutasahi, P.O. Old Town Bhubaneswar,
Dist. Khurda.

... **Appellants.**

Versus.

1. Kausalya Devi Dash Sharma, aged about 75 years, w/o. late Dungei Dash Sharma @ Lokanath Dash Sharma,
2. Debi Prasad Dash Sharma, aged about 46 years, s/o. late Dungei Dash Sharma @ Lokanath Dash Sharma,

3. Rama Prasad Dash Sharma, aged about 40 years, s/o. late Dungei Dash Sharma @ Lokanath Dash Sharma,

All are residing at Plot No. 385/2416, Lingaraj Nagar, Tarasundari Road, P.O. Old Town, P.S. Sri Lingaraj Bhubaneswar-2, Dist. Khurda.

4. Sri Lingaraj Mahaprabhu Bije Nijegaon Marfat Executive Officer, Trust Board, At/P.O. Old Town, P.S. Sri Lingaraj Bhubaneswar, Dist. Khurda.

... Respondents.

For the Appellants : Sri D.Mishra & Associates, Adv.

For the Respondent No.1 & 3 : Sri M.Mohapatra & Associates, Adv.

For the Respondent No.4. : Sri R.K.Routray, Adv.

Date of argument : 08.7.2016.

Date of Judgment : 13.7.2016

JUDGMENT

This appeal is preferred against the decree of dismissal dated 23.2.2015 in C.S. No. 149/454 of 2010/2009 by 2nd Addl. Senior Civil Judge, Bhubaneswar. The plaintiffs were the appellants and on the death of the original plaintiff respondent no.3 Madhusudan Behera, he has been substituted in this appeal as named in the cause title.

The respondents were the defendants in the suit. The original defendant no.1 on his death was substituted by defendant no.1 (a) (b) and (c) who are respondent no.1, 2 and 3 respectively. The defendant No.2 is the respondent no.4.

2. The plaint was presented on 19.5.2009 with the following prayers in respect of the suit land described in the schedule of plaint.

- (a) Let the Hon'ble Court be declared the sale deed executed by Gauranga Behera in favour of defendant bearing No.7620 on dated 26.12.1980 is illegal and void one and same is not binding to the plaintiffs.
- (b) Let the Hon'ble Court be declared the entry in Hal record of rights over the suit land were/are not correctly made hence such entries are to be corrected in favour of the plaintiffs as successors of lessee.
- (c) Let the possession of the plaintiffs over the suit land be recovered through process of the court.
- (d) Let the defendant be permanently restrained to interfere into the peaceful possession of the plaintiffs over the suit land by any means.
- (e) Let the cost of the suit and any other relief may be granted what the plaintiffs are entitled to get.

SCHEDULED OF PROPERTY.

Mouza- Bhubaneswar, Unit No.27, P.S. Bhubaneswar No. 65, Dist. Khurda, Hal Khata nO.291, Hal Plot NO.385/2416, Area Ac.0.112 decimals corresponding to Sabik Khata No.1878 , Sabik Plot NO. 2035/4, Area Ac.0.060 decimals.

2-A. The case of the plaintiffs is that originally suit land belonged to deity Sri Lingaraj Mahaprabhu Bije Nijegaon Marfat Trust Board under Anabadi status with Kisam Puratan Patit and it was recorded as such in the Record Of Right finally published in the year 1962. The father of the plaintiff was performing "Danga Sewa" of the deity. The Executive Officer of the deity on behalf of Trust Board had executed a lease deed on 27.3.1974 in favour of the father of the plaintiffs for building purpose. The premium was Rs.180/-. The father of the plaintiffs possessed the suit land and after his death the plaintiffs continued to perform "Sewa" of deity. On 14.5.2009 the defendant Dungei Dash Sharma @ Lokanath Dash Sharma tried to raise illegal construction on the said leased out land. Plaintiffs came to know that he had fraudulently snatched away a registered sale deed No.7620 on 26.12.1980 from the father of the plaintiffs. As per plaintiffs, as the suit property belongs to deity, it was not transferable without permission of the competent authority and defendant though had purchased Ac.0.060 decimals of land, had manipulated to get the same recorded before the settlement authority enhancing the area to Ac.0.112 decimals. As the plaintiffs were offering service to the deity and the threat of the defendant continued to persist, the suit was filed for the reliefs supra.

3. Defendant No.1, the original purchaser and his legal heirs filed written statement challenging the maintainability and cause of action of the suit. The plea of limitation has been averred. It is further averred that the suit land is unidentifiable for which the suit is liable to be dismissed u/o.7 rule 3 CPC. Admitting the purchase of the suit land from the lawful vendor, the purchaser-defendant had asserted his possession. With regard to excess area

than purchased, it is pleaded that the Settlement Authority had prepared and published the final ROR in the year 1991 after due field inquiry and defendant after constructing house was residing over the same and has been paying the land revenue and holding tax and thereby the possession of the plaintiffs was controverted.

The defendant no.2, deity Sri Lingaraj Mahaprabhu Marfat Executive Officer Trust Board, filed written statement which is very formal in nature.

4. Learned lower court framed as many as following six issues:-

- "I. Whether the suit is maintainable?
- II. Whether there is any cause of action to file the suit?
- III. Whether the suit is barred by law of limitation?
- IV. Whether the sale deed bearing NO.7620 dated 26.12.1980 executed by Gauranga Behera in favour of Defendant is illegal and void and the same is not binding to the plaintiffs?
- V. Whether the plaintiffs are entitled to get recovery of possession and permanent injunction?
- VI. To what other relief/reliefs, the plaintiffs are entitled?"

5. Three witnesses including plaintiff no.1 and plaintiff no.4 are examined on behalf of the plaintiffs and certified copy of RORs, lease deed dated 22.3.1974 and registered sale deed dated 26.12.1980 are exhibited. Defendant No.1 (b) and one witness to the sale deed are examined as D.W.1 and D.W.2. The original sale deed in question, lease deed dated 22.3.1974, building plan, order

of Vesting Case no.12 of 1980 and settlement ROR of the year 1991 coupled with holding tax receipts and electricity bills are exhibited vide Ext.A to Ext.L.

6. Learned lower court in answering issue no. IV and V has recorded findings that there is absence of pleading and evidence to the effect that disputed property was burdened exclusively with the "Danga Sewa" service to be rendered for the Lord Lingaraj Mahaprabhu and the father of D.W.1 was a bona fide purchaser of suit land for consideration in good faith with notice and it would be injustice to dispossess the purchaser- defendant from the suit land.

With regard to limitation enveloped in issue no.III, learned lower court has concluded that when the father of the plaintiff during his life time till 1987 had never challenged the recording of ROR in the mutation proceeding, the statutory presumption with regard to knowledge from the date of registration continued and for that the suit was barred by limitation. By necessary implication the suit was found to be not maintainable and was dismissed.

7. On behalf of the appellants, a petition u/o.41 rule 27 CPC was filed on 5.4.2016 to admit a photocopy notice dated 8.4.2015 from the Manager, Lingaraj Temple Office to plaintiff as additional evidence to which the respondents no.1 to 3 had filed objection.

Learned counsel for the appellants vehemently argued that as the suit land was the deity's property and it was leased out to his father in lieu of service "Danga Sewa", the transfer by registered sale deed on 26.12.1980 was void being contrary to the lease dated 22.3.1974 and ignoring that void document, the property of the

deity should have been protected in decreeing the suit. It is further argued that the suit land being the deity's property of Lord Lingaraj could not have been vested as per decision reported in **2015 (II) OLR -311 Niranjan Mekap and others -vrs- State of Orissa & others** and the order of OEA Collector in OEA Case No.12 of 1980 in favour of purchaser -defendant no.1 cannot be said to have created a new title and for that he prays to reverse the impugned judgment.

8. Per contra, learned counsel for respondents no.1 to 3 supported the impugned judgment on the grounds stated therein and further submitted that the decision in **Niranjan Mekap** case is not applicable to the facts of this suit as the ratio was rendered in a writ. With regard to additional evidence prayer, it is contended that notice during pendency of the suit dated 8.4.2015 is no way relevant for just decision of this case.

9. The striking facts which are admitted by both the parties are that originally the suit land belonged to respondent no.4 Sri Lingaraj Mahaprabhu Marfat Executive Officer Trust Board and this is what recorded in the ROR of the year 1962 Ext.1. Both parties admit and prove the lease deed Ext.2 which is Ext.B executed on 22.3.1974 and the lessor was the Lord Lingaraj Mahaprabhu Endowment Bhubaneswar. The registered sale deed dated 26.12.1980 is the bone of contention between the parties of which validity is questioned relying upon the status of the land belonging to the deity. Even additional evidence is sought on the ground that plaintiff was providing "Danga Sewa" service to the deity after the alleged sale deed.

10. On the conspectus of above factual scenario, it is unveiled that no notice was issued to the Commissioner of Endowment Odisha as required u/s.69 of Odisha Hindu Religious Endowment Act, 1951.

Learned counsel for both parties could not advance any argument to defend such legal infirmity arose out of the contravention of Section 69 of Orissa Hindu Religious Endowment Act, 1951. When duty is cast upon the court to issue notice, such contravention cannot be cured by issuing notice in this appeal. In this regard law is well settled in the decision reported in **2007 (Supp.I) OLR 1066 Gulei @ Golap Samal -vs- Shaikh Saffiqueuddin and Ors.** where His Lordship has held that

"3. Even otherwise in consonance with Section 69 of the Orissa Hindu Religious and Endowments Act whenever the trustee of any religious institution is sued 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. The impugned order reveals that the Court below has not kept in mind the aforesaid provisions. As the lands in dispute originality belonged to a religious institution, according to this Court a notice should be issued to the Commissioner of Endowments so as to avoid any collusion among the parties inter se."

In another decision reported in **1986 (I) OLR Page-636 the Deity Sri Jagannath Swamy and. vs. Biswanath Panda (Division Bench)**, Their Lordships have reiterated that :

"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 Cutt. 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 under Section 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”.

11. Digressing from doctrine supra, the impugned judgment is found to have been passed in contravention of section 69 of The Odisha Hindu Religious Endowment Act, 1951. The remedy is prescribed in The **Deity Shri Jaganath Swamy** case. The suit is to be remanded to the lower court after setting aside the impugned judgment. As the same is inevitable here, the prayer for additional evidence u/o.41 rule 27 CPC does not merit consideration and hereby stands rejected.

12. In the end what resulted is that for the contravention of section 69 of the Odisha Hindu Religious Endowment Act, 1951, the impugned judgment and decree dated 23.2.2015 are to be set aside and the appeal is to be allowed. Hence, it is ordered.

ORDER.

The appeal be and the same is allowed on contest without cost. The Judgment and decree dated 23.2.2015 is hereby set aside. The suit is remanded to the trial court with a direction to issue notice to the Commissioner of Endowment in conformity with Sect. 69 (1) of the Odisha Hindu Religious Endowment Act,1951 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 the court for the purpose of cross-examination by the Commissioner of Endowment, 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 Endowment. The parties are directed to appear in the trial court on 28.7.2016 for receiving the directions as to further proceedings in the suit u/o.41 rule 26-A CPC.

Addl. District Judge-cum-Special
Judge, C.B.I. Court No. II, Bhubaneswar.

Typed to my dictation and corrected by me. Judgment is pronounced in the open Court today, this the 13th July, 2016.

Addl. District Judge-cum-Special Judge,
C.B.I.Court No.II, Bhubaneswar.