

Ramachandra Kar and ors. Vs. Rajendranarayan Das and ors.

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Court : Orissa

Decided On : Nov-09-1956

Reported in : AIR1957Ori104; 23(1957)CLT40

Judge : Mohapatra and ;P.V.B. Rao, JJ.

Acts : [Evidence Act, 1872](#) - Sections 21 and 145; Hindu Law

Appeal No. : Second Appeal Nos. 69 and 108 of 1952

Appellant : Ramachandra Kar and ors.

Respondent : Rajendranarayan Das and ors.

Advocate for Def. : G.B. Mohanty, ;K.C. Misra, ;S. Mohanty, ;R.N. Panigrahi and ;N. Padhi, Advs. in S.A. No. 69 of 1952 and ;G.B. Mohanty, ;R. Das and ;N. Padhi, Advs. in S.A. No. 108 of 1952

Advocate for Pet/Ap. : M. Mohanty and ;B.K. Bose, Advs. in S.A. No. 69 of 1952 and ;S. Mohanty, Adv. in S.A. No. 108 of 1952

Disposition : Appeal allowed

Judgement :

Mohapatra, J.

1. Both those appeals arise out of the same judgment dated 12-11-1951 of Sri K.C. Mahapatra, 1st Additional Subordinate Judge of Cuttack. They have been heard together and will be covered by this judgment of ours.

2. Both these appeals arise out of a suit brought by the plaintiffs under Section 64 of the Orissa Hindu Religious Endowments Act for a declaration that the deity Sri Hanuman Jew situate in the heart of the town of Cuttack is a family deity of the plaintiffs and pro forma defendant. No. 7 and that the temple in which the deity is situate is an excepted temple.

Defendants 1 to 5 represent the public and defendant No. 6 is the Endowment Commissioner. Second Appeal No. 69/52 has been filed, by the members of the public and Second Appeal No. 108/52 has been filed by the Commissioner of Endowments. It is to be noted here that the plaintiff-respondents filed a petition for amendment of their plaint to delete the prayer for declaration of the temple as being an excepted one.

The only question to be determined in these appeals is whether the endowment in question is a private one or a public one. The endowment fetches a very small income and the property is not more than twelve cents in area. The plaintiffs' case is that the idol Sri Hanuman Jew was the private family deity of one Narayan Das who had installed the same deity in his residence.

The said Narayan Das purchased some property in the name of the deity describing himself as the martatdar of the deity on the basis of a Kabala (Ext. 2) dated 5-1-1892. After the death of Narayan Das his widow Moni Bewa inherited the martatdari right and was performing the Seva puja of the deity. She having failed to carry out the seba puja ultimately executed a Sebasamarpana Patra (Ext. 3) dated 30-3-1909 in favour of Balakrushna Das, the ancestor of the present plaintiffs.

Since then Balakrushna, and after him, the plaintiffs' father and the plaintiffs are managing the affairs of the deity and are possessing the small acreage appertaining to the private endowment; and the public have absolutely no interest in the endowment. In the year 1944 the public intervened and wanted to manage

the affairs of the deity, and therefore on an application filed before the Endowment Commissioner a case was initiated which was ultimately decided against the present plaintiffs, it being declared by the Endowments Commissioner that Sri Hanuman Jew was a public deity and the temple a non-excepted one. So the present suit.

3. The defence, in short, is that it is a very ancient endowment and the deity is being worshipped by the public as a matter of right since time immemorial; that they are offering Bhogarag, performing Kirtan and making contributions to the seba puja of the deity.

4. The parties have adduced both oral and documentary evidence. On a careful consideration of the evidence on record, the trial Court came to the finding that the endowment in question was a public one. The lower appellate Court has reversed the said finding and decreed the plaintiff's suit. So the two appeals--one by the members of the public and the other by the Endowment Commissioner.

5. Both the Courts below have concurrently found that there is no evidence on record to show who installed the deity and who was the founder; but nevertheless the deity is an ancient deity and must have been installed prior to 1892. We get a reference to the deity in Ext. 2, the Kabala, date 5-9-92 on the basis of which Narayan Das purchased some of the disputed property in the name of the deity Hanuman Jew describing himself as the matfatdar.

It has also been found, even by the lower appellate Court, that the Bijesthali of the deity is on the main road, the image of the deity is of sandstone, 6 ft. high fixed on a stone pedestal. 20 ft. X 16 ft. of one piece of stone. While the trial Court, on the basis of his finding that the public as of right were offering Bhogarag, worshipping and performing Kirtan before the deity, came to the conclusion that it was a public endowment, the lower appellate Court, accepting the finding regarding public offerings, public worship and public Kirtan, came to the reverse conclusion for the reason that these are not sufficient to declare the endowment as a public one.

6. The most important document is Ext. L the statement of plaintiff No. 1 and plaintiff No. 2 before the Inspector of Endowments on 9-8-1945. Before the lower

appellate Court there was a good deal of controversy regarding the admissibility of this document as plaintiff No. 1 had not been examined in the case and the provisions of Section 145, Indian Evidence Act, had not been complied with.

The lower appellate Court, however, relying upon the decisions reported in *Ramkeshwar Das v. Baldeo Singh*, AIR 1936 Pat 588 (A) and *Firm Malik Des Raj v. Firm Piara Lal Aya Ram* AIR 1946 Lah 65 (FB (B)) came to the conclusion that the statement was admissible as admission of the parties even though plff. No. 1 had not been examined. There is another aspect which places the question of admissibility of Ext. L beyond all possible controversies. This appears to have been signed by both plff. No. 1 and pltf. No. 2. Plaintiff No. 2 was examined as a witness in the case and he was in fact confronted with this statement and he admitted that he had signed.

It is clear to us, in fact it is a statement of both plaintiffs 1 and 2 and is admissible in evidence as admission of the parties themselves. The lower appellate Court, after finding that it is admissible, has committed a serious error of law in not considering at all the contents thereof. It is worthwhile to quote some portions of the previous statement (Ext. L).

'The deity Sri Hanuman Jiew was originally installed under a tree on a stone slab on this plot of land where the temple stands at present. From time immemorial the deity has been there like that. Later the members of the public constructed a thatched house and installed the deity.

'I cannot say how the deity came there. The house in which the deity is installed is a pucca structure with thatched roofing..... The public constructed this house in 1944 only.'

This is an important piece of admission of the plaintiffs and the judgment of the lower appellate Court has been vitiated in Law in not having considered the effect of this admission. There is in evidence which was accepted by the trial Court that in fact the deity was under a Banyan tree abutting on the road and easily accessible to the public. This finding, as indicated by me above, is in a way upheld by the lower-appellate Court.

7. It is further important to note that the deity was never in the house of any private individual, that is, of Narayan Das or of Balkrushna Das. Balakrushna according to the plaintiffs' version, was the marfatdar ever since 1909 and the admitted case of the plaintiffs is that his house is situate (sic) about a mile off from the seat of the deity. The deity is fairly a big one which cannot ordinarily be accommodated in a private house. In addition to these factors, when it is a very ancient deity, and, as found by both the Courts below, the finding not being controverted before us, the public offer Bhograg, worship and perform Kirtan freely and without any obstruction, there is no doubt left in our mind that it is a public deity and the endowment, however small it may be, is a public endowment.

8. Mr. G.B. Mohanty, appearing on behalf of the plaintiff-respondents, relies very much upon a decision of their Lordships of the Privy Council reported in Bhagwan Din v. Har Saroop, AIR 1940 PC 7 (C), to support the judgment of the lower appellate Court that public worship and public offerings of Bhoga freely are not sufficient to declare it to be a public institution. After going through the entire decisions carefully we are definitely of the view that the facts of the case before their Lordships of the Privy Council were entirely different from the present one.

There the original grant was on record and was of the year 1781. It was not a grant to the idol or an endowment of a temple or a gift made by way of trust for a public religious purpose. The grant was to Daryao Cir and his heirs in perpetuity. It was further mentioned in the grant that the grantee was to enjoy the property from generation to generation. Furthermore, it was clear before their Lordships that:

"the general effect of the evidence is that the family have treated the temple as family property, dividing the various forms of profits whether offerings or rents, closing it so as to exclude the public from worship when marriage or other ceremonies required the attendance of the members of the family at its original home, and erecting samadhis to the honour of its dead.'

The last feature seems to be a very important feature weighing with their Lordships to conclude that it was a private institution. It clearly goes against the theory that the public were offering Bhoga as of right. In these circumstances, therefore, their Lordships found;

'Facts and circumstances, in order to be accepted as sufficient proof of dedication of a temple as a public temple, must be considered in their historical setting in such a case as the present; and dedication to the public is not to be readily inferred when it is known that the temple property was acquired by grant to an individual family. Such an inference if made from the fact of user by the public is hazardous, since it would not in general be consonant with the Hindu sentiments or practice that the worshippers should be turned away, and as worship generally implies offerings of some kind it is not to be expected that the managers of a private temple should in all Circumstances desire to discourage popularity.'

But their Lordships also acknowledged the position that the deity, which was originally private, might be proved to have been dedicated for the benefit of the Hindu public subsequently when they observed:

'While it is certainly possible that in the course of years the temple should have been so dealt with as to become dedicated for the benefit of the Hindu public as a public temple, such a dedication requires to be proved.'

In our opinion, the present case can never be taken to be covered by the dictum laid down by their Lordships of the Privy Council in the above case .

9. We may, however, refer to another decision of the same Board reported in *Lakshmana Goundan Pujari v. Subramania Iyer*, AIR 1924 PC 44 (D). The instant case appears to be on a much better footing than the case before their Lordships of the Privy Council. The facts as found were that the founder of the temple dreamt that he should install at his house an idol of the God Subramaniaswami and that the God would come to his house and enable him to foretell events.

He did install that God at his house and allowed Brahmins and other Hindus of various castes to worship the idol as if it was a public idol. He acted as the pujari of the idol, and received as the pujari offerings made to the idol by the worshippers and fees which he charged in respect of processions and other religious services. The number of Hindu worshippers increased and with the offerings and fees he purchased some jewels for the idol, built for himself another house in the village to which he and his family removed, and he extended the house in which the idol

was and added to it covered rooms for the accommodation of the worshippers during the ceremonies of worship. He also built in the village a rest house for the use of the worshippers of the idol.

On certain days in each week the Hindu public was admitted by him free of charge to worship in the greater part of the temple, to one part only on payment of fees, and to the inner shrine apparently not at all. With the income which he derived from offerings and fees at the temple he efficiently maintained the temple as if it were a public temple and discharged all the expenses connected with the temple and the worship of the idol there. He applied the balance of the income he so obtained to the support of himself and his family and in acquiring for his own benefit and that of his family some immovable property which he possessed before he died.

It was held by their Lordships that the founder, held out and represented to the Hindu public that the temple was a public temple at which all Hindus might worship, and that the inference is that he had dedicated the temple to the public.

10. In conclusion, therefore, when in the present case the actual dedication is untraceable, but nevertheless the deity of such a big size is a very ancient deity which was situate under a tree abutting on the public road and accessible to the public and being worshipped by the public for a sufficiently long time, and the public constructed a structure in the year 1944 to put in the deity and as it was never in the house of any private individual at any time whatsoever, the continuous offerings, worship and performance of Kirtan by the public for a long time assume great importance to determine the character of the endowment as a public one. We should, therefore, set aside the judgment of the lower appellate Court and restore the judgment and decree of the trial Court. Both the appeals are allowed and the appellants are entitled to one set of costs throughout.

P.V.B. Rao, J.

11. I agree.

