

Sukadev Tapaswai and ors. Vs. Sri Sidheswar Mahadev Bija Silod and ors.

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Court : Orissa

Decided On : Jun-27-1985

Reported in : AIR1986Ori100; 60(1985)CLT208

Judge : B.N. Misra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 1, Rule 8(2)

Appeal No. : Misc. Appeal No. 142 of 1982

Appellant : Sukadev Tapaswai and ors.

Respondent : Sri Sidheswar Mahadev Bija Silod and ors.

Advocate for Def. : S.P. Misra, Adv.

Advocate for Pet/Ap. : S. Misra, Adv. No. 2

Disposition : Appeal dismissed

Judgement :

ORDER

B.N. Misra, J.

1. Respondents 2 to 25 had filed a petition under Section 41 of the Orissa Hindu Religious Endowments Act, 1951 (hereafter referred to as the 'Act') for declaration that respondent No. 1, Sri Sidheswar Mahadev, was a public institution and that

they and the late Abhi Tapaswi (Opp. party No. 1) and appellant No. 4 were the hereditary trustee of the deity. Their case is that their ancestors had installed the deity and they had all along done the Seba puja and acted as Marfatdars of the deity. They had impleaded appellants 5 and 6 (opposite parties 3 and 4) as representing the Hindu public. The application of the respondents was registered by the learned Asst. Commissioner of Endowments on 10-12-76. The respondents had also filed an application for publication of a notice under the provisions of Order 1, Rule 8, C.P.C. A draft notice filed by the petitioner was approved and that petition was allowed on the same day. The notice under Order 1, Rule 8 C.P.C. was published in the 'Samaj' on 6-2-77 and the said publication is on record. In the meanwhile opp. parties 3 and 4 were set ex parte on 21-1-77 and on that day three persons, Nakula Senapati, Adikanda Behera and Dinabandhu Pati filed a petition to be impleaded as parties. These three persons had appeared before the Court prior to the publication of the notice under Order 1, Rule 8, C.P.C. by orders dt. 26-5-77 and 18-6-77, all the opp. parties were set ex parte and the petition for impleading filed by the aforesaid three persons was also rejected. The suit was heard ex parte. By his order dt. 30-6-77 the learned Asst. Commissioner of Endowments held that the institution was a public institution and that the petitioners (respondents 2 and 26) had failed to establish that they and opp. parties 1 and 2 were the hereditary trustees. The petitioners filed an appeal before the learned Deputy Commissioner of Endowments. During the pendency of the appeal before the learned Deputy Commissioner opp. party No, 1 Abhi Tapaswi died and his three legal representatives were substituted as respondents 1(a) to 1(c). In the lower appellate court the three legal representatives of Abhi Tapaswi and opp. party No. 2 appeared through counsel and adduced documentary evidence. The appeal was dismissed by the learned Deputy Commissioner of Endowments by his order dt. 17-11-78. There after the respondents filed Misc. Appeal No. 208 of 1978 in this court. By order dt. 21-3-81 the appeal filed by the respondents was allowed and the matter was remanded to the learned lower appellate court for fresh (hearing) according to law. In the order of remand the learned lower appellate court was directed to examine the matter afresh and decide whether the provisions of law with particular reference to Order 1, Rule 8, C.P.C. had been complied with. It was further observed that in case the learned

lower appellate court would come to the conclusion that the provisions of law had not been properly followed it was open to that court to remand the case to the learned Asst. Commissioner. After remand the learned Deputy Commissioner found that the provisions of Order 1, Rule 8 C.P.C. had not been properly followed and accordingly as directed the case was remanded to the learned Asst. Commissioner of Endowments for fresh trial and disposal according to law. It is this order of remand of the learned Deputy Commissioner of Endowments which is under challenge in this appeal.

2. Mr. S. Misra-II, learned counsel appearing for the appellants, submitted that the order of remand cannot be sustained in law as the learned lower appellate court did not properly follow the directions of this Court contained in the order of remand. Mr. S. P. Misra, learned counsel appearing for the respondents, on the other hand, submitted that the order of remand does not call for interference as the learned Deputy Commissioner has remanded the case to the learned Asst. Commissioner for fresh trial after coming to the conclusion that the provisions of Order I, Rule 8, C.P.C. had not been complied with. In support of his contention Mr. S. P. Misra relied on a decision reported in AIR 1927 Cal 608 (Ismail Munshi v. Niamat Khan wherein it was held, :

'A third objection has been taken in connection with these proceedings and that relates to the notice that was issued for the purposes of this representation. This notice to which our attention has been drawn gives first of all the names of the plaintiffs as Niamat Khan and others. It purports to state that a suit has been instituted by the plaintiffs against the defendants for the declarations to which I have already referred, and it calls upon the public or such members of the public as may so desire to appear and contest the plffs.' claim. There is then a schedule attached showing the plots of land with regard to which a declaration was sought for by the plffs. in the suit. It has been contended before us that the notice does not satisfy the requirements of law, and I may say at once that I feel very much pressed by this contention. The object of a notice required by Order I. Rule 8 of the Civil P.C. has been clearly explained in the case of Kali Kanta Sarma v. Gouri Prosad Sarma (1890) ILR 17 Cal. 906, where Mr. Justice Banerji, delivering the judgment of this court observes thus :

Section 30, as we understand it, requires that the court should exercise a judicial discretion in permitting some definite person or persons to sue or be sued on behalf of all the persons interested, and it further requires the court to give to the persons interested notice of the institution of the suit which must include a notice of the names of the persons who have been permitted to represent others, so that the persons interested may have an opportunity of knowing who have been selected to represent them. Now, in the present case, no such thing was done,. In the first place the court did not give permission to any definitely named persons among those interested to represent the rest, and in the second place the notice issued by the court did not show who the persons were that had been selected to represent the remaining persons interested.

Judged by the test laid down in the case the notice in the present case falls far short of the requisite. It did not in point of fact mention the fact that the Defendant No. 1 would be authorised to represent the public in the suit and the public in general could not possibly have any ideas to the persons who were going to represent them for the said purpose.....'

On going through the notice under Order 1, Rule 8, C.P.C. which was published in the 'Samaj' on 6-2-771 find that there is no mention therein that Abhi Tapaswi and others who were described as opposite parties were authorised and had been permitted to represent other members of the Hindu public. Judged by the test laid down in the aforesaid decision of the Calcutta High Court the notice in the present case falls far short of the requirements of Order 1, Rule 8 C.P.C. Courts, when called upon to deal with applications under Order 1, Rule 8, C.P.C. should bear in mind that the provisions contained therein are mandatory and not merely directory and are essential preconditions for trial of the case as a representative suit. Courts must see that if they direct that the notice should be by public advertisement, it must disclose the nature of the suit as well as the reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the case or to defend against it. Further the notice must mention the names of the persons who have been permitted to represent them so that the persons interested may have an opportunity of knowing who have been selected to represent them. These mandatory requirements having not been complied with

in this case, I agree with the conclusion of the learned lower appellate court that the provisions contained in Order 1, Rule 8 C.P.C. have not been complied with.

3. In the result, this appeal is dismissed and the impugned order of remand is upheld. I would only add that the dispute between the parties being an old one, the learned Asst. Commissioner shall expeditiously take up the hearing of this case and dispose it of according to law keeping in view the directions contained in the order of the learned Deputy Commissioner and also the observations made above. Evidence already on record shall, after remand, be treated as evidence in the suit for all purposes. If so moved, the learned Asst. Commissioner may make such interim arrangements as he thinks fit for proper administration of the institution and its properties pending disposal of the suit. There shall be no order as to costs.

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