

IN THE HIGH COURT OF ORISSA, CUTTACK

R.S.A. No.254 OF 2004

In the matter of an appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 02.04.2004 and 12.04.2004 respectively passed by the learned 1st Addl. District Judge, Cuttack in R.F.A. No.9 of 2003.

Braja Kishore Mohanty & others

.... Appellants

-Versus-

Nilachal Saraswat Sangha & others

.... Respondents

R.S.A. No.255 OF 2004

In the matter of an appeal under Section 100 of the Code of Civil Procedure assailing the judgment and decree dated 02.04.2004 and 12.04.2004 respectively passed by the learned 1st Addl. District Judge, Cuttack in R.F.A. No.5 of 2003.

Braja Kishore Mohanty & others

.... Appellants

-Versus-

Nilachal Saraswat Sangha & others

.... Respondents

Advocate(s) who appeared in both the cases through Hybrid mode:

For Appellants - M/s. S.S. Rao, B. Muduli, B.K. Mohanty,
Advocates
M/s. B. Mishra, B. Pujari, B. Muduli,
K.K. Mishra, S.S. Tripathy, Advocates

For Respondents - M/s. N.K. Sahu, S. Das, B.S.Panigrahi,
S. Misra, Advocates
M/s. S.P. Mishra, P.K. Mohapatra,
S. Dash, B. Mohanty, Advocates
M/s. Jagannath Patnaik, S. Pattnaik,
A.K. Mishra-2, Advocates

PRESENT:-

THE HON'BLE SHRI JUSTICE SATRUGHANA PUJAHARI

Date of judgment:- 20.09.2022

S. PUJAHARI, J.

This defendants are the appellants in both the appeals against the common judgment dated 02.04.2004 passed by the First Additional District Judge, Cuttack in RFA No.5 of 2003 and RFA No.9 of 2003. Both the appeals were filed challenging the judgment and decree dated 23.12.2002 and 06.01.2003 respectively passed in T.S. No.376 of 1989 by the learned Additional Civil Judge (Senior Division), Cuttack whereby the learned Civil Judge decreed the suit in part. The Plaintiffs-Appellants herein had preferred RFA No.5 of 2003 whereas the Defendants had preferred RFA No.9 of 2003. The learned 1st Additional District Judge by a common judgment disposed of both the appeals whereby RFA No.5 of 2003 was allowed and RFA No.9 of 2003 was dismissed. Hence, both these second appeals were heard together and are being disposed of by this common judgment.

2. The Respondent-Plaintiff No.1 (Nilachal Saraswata Sangha, Puri) known as Kendra Sangha being

represented by it's the then Secretary Late Raghunath Pati and Cuttack Saraswata Sangha a Branch of Nilachala Saraswata Sangha, Puri (Plaintiff No.2) being represented by its Secretary Late Anatha Bandhu Pradhan and the President of Kendra Sangha (Plaintiff No.3) jointly filed Title Suit No.376 of 1989 in the Court of the Civil Judge (Senior Division), Cuttack claiming the following reliefs:-

“(a) Let it be declared that defendant No.1 has no legal authority or right to sign or issue the Parichaya Patra (Identity Card) as President of the Sakha Sangha, Plaintiff No.2, nor he can do any act or interference in the smooth management and Seva Puja, Nitikantis of the Plaintiff No.2, Sakha Sangha, on his capacity as either the President or the member of the Sakha Sangh, Plaintiff No.2;

(b) Let it be further declared that the defendant No.1 or anybody following him, are authorized to use the rubber stamp, seal of Late Durga Charan Mohanty as Parichalaka of the Sangha in any correspondence with the members of the plaintiff No.1 and Plaintiff No.2, Sangha or in the Parichaya Patra issued to the alleged members and further that the use of the seal/ rubber stamp of late Durga Charan Mohanty is without any authority and not recognizable by plaintiff No.1 or 2;

(c) Let it be further declare that defendant No.1 to 21 or any other persons who have been granted the Parichaya Patra under the signature of defendant No.1 as president with seal of Late parichalaka Durga Charan Mohanty cannot be said to be valid members of either the plaintiff No.1 or plaintiff No.2, Sangha and anything done by the defendant or their followers having the said Parichaya Patra under the signature of defendant No.1 as President should be held to be unauthorized and without the sanction of plaintiff No.1 or plaintiff No.2 and would be treated as illegal interference in the management, seva puja and Nitikantis of the Sangha of Plaintiff No.1 and 2.

(d) Let a decree of permanent injunction be passed against the defendants and their agent and followers, not to do any act or Perform any function or activities relating to the plaintiff No.2 or plaintiff No.1, Sangha, or Sri Sri Thakur and not to interfere in the Niti, daily, weekly and monthly seva puja, monthly Mahila Puja and or annual function of Sri Sri Thakur and not to Collect funds, donations as members of the Sangha, on the basis of the Parichaya Patra granted under the seal of Late Durga Charan Mohanty and signature of defendant No.1, be prevented from issuing any Parichaya Patra in future.

(e) Let a decree of permanent injunction be passed against the defendants not to interfere in daily or weekly seva puja, Nitikantis, monthly prayer of Sri Sri Thakur Bigraha and management of the plaintiff

No.2, Sangha situated in schedule A land and not to create any disturbance in any manner over Schedule-A property.

(f) Let any other or further reliefs be granted as deem it and proper;

(g) Let the cost of the suit be declared in favour of the plaintiffs and against the defendants.”

3. The case of the plaintiffs in brief as pleaded in their plaint was that Nilachala Saraswata Sangha (Plaintiff No.1) is a society registered under the Societies Registration Act, 1860. The aim and object of the Sangha was to propagate the philosophy and ideology of Sri Sri Thakur Srimat Swami Niagamananada Saraswati Dev. After its registration, Bye law of the Sangha was framed with various provisions to regulate the activities of the Sangha. As per the provision of the Bye law, overall affairs of the Kendra Sangha were entrusted to the Governing Body, and the Governing body remained as the custodian of all the properties of Kendra Sangha, Branch Sanghas and the Sikshya Kendra Sangha. As per the Bye Law, the Governing body shall consist of 9 members who shall be elected in the combined meeting of the existing members of

the Governing Body and the members of the Advisory Board to be convened by the Secretary of the Kendra Sangha. The Kendra Sangha has three categories of members (i) Probationer, (ii) Regular Members, (iii) Associate Members. The Kendra Sangha shall be consisting of three organs (i) A Governing Body, (ii) An Advisory Board and (iii) A General Body.

The further case of the plaintiffs was that as per the Bye Law, the arrangement of convening of “Utkal Pradesika Bhakta Samilani” and for holding the sessions of “Sarbabhoum Bhakta Samilani” was to be taken by the Governing Body of the Kendra Sangha. Late Durga Charan Mohanty, a direct disciple of Thakur Nigamananda Paramahansadev, was functioning as the Secretary and Parichalaka of NSS, Puri, Plaintiff No.1

After the death of Durga Charan Mohanty in the year 1985, the Governing Body of NSS, Puri was reconstituted in a joint meeting of the Governing Body and Advisory Board held on 24.02.1986. One Chaitanya Charan Das was elected as its President and Late Raghunath Pati was elected as the Secretary in place of

Late Durga Charan Mohanty. The next election year was being 1989, as per the Resolution dated 01.02.1988, the plaintiff No.1 accepted the invitation of Balasore and Mayurbhanj Sakha Sangha and authorized them to hold 38th Annual Utkal Pradesika Bhakta Samilani to be held at Balasore on 19th, 20th and 21st February, 1989. Advertisement inviting Members of Plaintiff No.1 were published in daily "Samaj" dated 12.12.1988 and 26.01.1989 for holding the Samilani at Balasore.

Further case of the plaintiff was that one Biswanath Pradhan was a Member of the Governing Body of plaintiff No.1. He separated himself from the body and by describing himself as President of Utkal Pradesika Bhakta Samilani Abhyarthana Samiti, Birtung had convened a parallel 38th Utkal Pradesika Bhakta Samilani of NSS, Puri (Plaintiff No.1) at Sikshya Kendra, Birtung on 18th, 19th & 20th February, 1989. The invitation letter issued by Biswanath Pradhan was bearing rubber seal purported to be of late Durga Charan Mohanty, the then Parichalaka who was dead since 07.12.1985. The aforesaid action of Sri Biswanath Pradhan in issuing invitation letter affixing the

rubber seal purporting to be that of late Durga Charan Mohanty and calling a parallel meeting was wholly unauthorised tantamount to acting contrary to the provisions of the Bye-law of the Sangha. Said Biswanath Pradhan was also supported by two other members of Sangha namely Damodar Das and Jagannath Samantara.

The creation of bifurcation and formation of self styled governing body of their own at Birtung had no existence in the eye of law. Utilisation of the seal of the deceased person was an act of forgery and any action taken by a person having not been authorized by the Governing Body of the plaintiff No.1- Association was unauthorized and illegal. सत्यमेव जयते

The defendant No.1, 2 & 3 being nominated by the so called governing body formed at Birtung claimed themselves as the President, Secretary of Plaintiff No.2 (Sakha Sangha). The defendant No.1, styling himself as the President of Plaintiff No.2 issued parichaya patra (Identity Cards) to their followers recognising those persons as the members of Nilachala Saraswata Sangha, Puri under the rubber stamp/ seal of late Durga Charan Mohanty.

Defendant No.1 who was acting as President of the alleged governing body had got no authority or recognition in the eye of law to issue parichaya patra by using the name of Plaintiff No.1. Defendant No.1 was issuing parichaya patra (identity card) on his own signature with the rubber seal of ex-parichalaka late D.C. Mohanty, though the Parichalaka was dead since 1985. The parichaya patra (identity card) issued by defendant No.1 to their followers as the members of Nilachala Saraswata Sangha for the year 1989-90 cannot be recognized to be valid since the persons granting "parichaya patra (identity card) were not authorized to grant the same nor the same were granted as per the provisions contained in the bye-law of the Sangha. Any act of performance done by these persons with regard to the activities of the Sangha are to be held to be unauthorized and without any *locus-standi*.

Since the reliefs claimed in the suit revolve around the authority of the Defendant No.1 to issue Parichaya Patra to other defendants and persons who were large in number, the plaintiffs filed the Suit by impleading Defendant Nos.1 to 20 as the representative of all the

disputed Parichaya Patra holders having the same interest. According to the plaintiffs, this was in compliance with Order-1 Rule-8 CPC.

4. The Defendant Nos.1 to 17 filed a joint written statement denying the plaint averments. The case of the defendants was that Raghunath Pati had no locus standi to represent Nilachala Saraswata Sangha, Puri and he was not the elected Secretary of the Sangha and had no right to file the suit. Nilachala Saraswata Sangha, Puri was not the Kendra Sangha. Main establishment of the Sangha is situated at Birtung, Gop in the district of Puri which was the Kendra Sangha though the registered office of the Sangha was situated at Puri. Plaintiff No.2 was not the elected Secretary of Cuttack Saraswata Sangha. Cuttack Saraswata Sangha was a separate registered society. The suit as framed by the plaintiffs is incomplete inasmuch as the Plaintiffs had no *locus standi* or right to initiate the present Suit. After the death of Durga Charan Mohanty a great void was created not only in the management of the Association but also in the heart of the devotees of Sri Sri Thakur. The Bye Law did not provide any mode or

machinery for calling the General Body meeting which is commonly called as Bhakta Samilani. To avoid such lacunae, a meeting was convened on 25.2.1986 and it was unanimously resolved that a permanent Abahaka Committee was to be constituted and Sri Biswanath Pradhan would continue as the permanent President of the said committee upon whom the duties of convening the Meeting, Samilani would vest. As per the aforesaid decision, Biswanath Pradhan was empowered and authorized to convene the General Body meeting of Bhakta Samilani on 18.2.1989. The venue of the Samilani was decided to be held at Birtung, the Kendra Ashram. In accordance with the schedule, the meeting was convened on 18th, 19th & 20th February, 1989 and in the said meeting, the new Governing Body was constituted electing 9 members. By Resolution dated 19.2.1989, the duly elected President Sri Biswanath Pradhan was permitted to execute the power of Parichalaka. In accordance with the Resolution of the Samilani, the newly elected President Sri Biswanath Pradhan nominated/selected Braja Kishore Mohanty and 7 other persons as the Members to the

Council of Management of Cuttack Saraswata Sangha. Braja Kishore Mohanty (Defendant No.1) was elected as President. Ramesh Chandra Ray (Defendant No.2) was selected as Secretary of Cuttack Saraswata Sangha. The aforesaid Council of Management had taken over charge and performed the duties to the satisfaction of all the genuine devotees. The meeting held at Balasore had no legal sanctity as it was not convened by a person having the right. The other paraphernalia which are customarily follows were not taken care of and the said meeting is non-existent in the eye of law. The Governing Body of which the Defendants were members was the duly constituted Governing Body. Raghunath Pati, Anathabandhu Pradhan and Plaintiff No.3 had no locus standi to file the suit as they were not the duly elected/selected office bearers of the Sangha. The Plaintiffs had filed Original Suit No.46 of 1989 in the Court of Sub-ordinate Judge, Puri which was the earlier suit and the issue involved in both the suits being directly and substantially same, the present suit was liable to be dismissed in limine or should be stayed till disposal of the O.S. No.46 of 1989 pending in the Court of the Sub-

ordinate Judge, Puri. The Parichaya Patras issued by the defendants were the only genuine cards issued in consonance with the Bye Law by the persons having authority to do so. The Defendants were the only persons in management who carry on the Seva Puja and Nitikantis of Sri Sri Thakur whereas the Plaintiffs had no locus standi to file the Suit challenging the Authority of Defendants. Hence, the suit was liable to be dismissed.

5. The learned Trial Court on the basis of the aforesaid pleadings of the parties framed as many as 11 issues. Both parties led evidence in support of their respective case. The plaintiff examined 4 witnesses and several documents were exhibited on their behalf to prove their case. Whereas the defendants examined only one witness and series of documents were exhibited on their behalf as evidence. Out of the issues framed by the Trial Court, the main issues are (II) whether the plaintiffs have got the cause of action to file the Suit, (IV) whether Raghunath Pati was duly elected as Secretary of Nilachala Saraswata Sangha, (V) whether Plaintiff No.2 was represented by its Secretary Anathabandhu Pradhan, (VI)

whether the Plaintiff No.3 was the President of Plaintiff No.2, (VII) whether Defendant No.1 was empowered to issue Parichaya Patra to the devotees of Nilachala Saraswata Sangha and (X) Whether Defendant No.1 was duly elected as President of the Society in the year 1988. The learned Trial Court delivered the judgment on 23.12.2002. On considering the evidence on record and deciding Issue No.(IV), (V), (VI) & (X), the learned Trial Court recorded the following findings :-

“(i) The Samilani convened at Birtung headed by Biswanath Pradhan claiming to be the President of the Abahaka Committee is purely illegal which is contrary to the decision taken by the Governing Body.

(ii) In absence of existing Governing Body and Advisory Committee in the Samilani at Birtung, no election can be conducted in respect of the Office Bearers. The General Body having no power to elect the President of the Sangha, the selection of Office Bearers including the President claims to have been acquired by Biswanath Pradhan is illegal and invalid in accordance with the Bye Law.

(iii) There is sufficient evidence from the side of the Plaintiff regarding the decision taken by the Governing Body for holding Samilani as well as the

joint Meeting of the Governing Body and Advisory Committee at Balasore on 19th, 20th & 21st February, 1989.

(iv) The Samilani at Balasore having been convened and Election having been conducted in accordance with the Bye law at Balasore by virtue of the Specific Resolution, the Election of the Office Bearers of the Sangha is considered to be valid one. The Election conducted at Balasore is proper and all the representatives of original Sangha having been present at Balasore, the plaintiff is the original Sangha as initially established by Sri Sri Thakur.

(v) The Election of the Defendant No.1 for the post of Office Bearers of Cuttack Saraswata Sangha is illegal, null and void.

(vi) ★ The Defendant No.1 is not the real President of Cuttack Saraswata Sangha. He being the illegal President, no power of Parichalaka can be vested to him for issuance of Parichaya Patra to the devotees. It is only the President of Nilachala Saraswata Sangha to function as Parichalaka as per entrustment given by the Governing Body. The Defendant No.1 in this connection shall have no power to issue Parichaya Patra under his signature to the Devotees and the Parichaya Patra issued by him to the devotees are held to be invalid and inoperative in the eye of law.”

But, the learned Trial Court while deciding Issue No.(I) & (II) with regard to the maintainability of the Suit and cause of action had observed as under :-

“Due to the dispute ensued between the Sangha Members, the Thakur cannot be considered to have acquired Ananda and Cherished long spiritual desire of attainment of Moskha to his devotees. Where there is no presence of “Sri Thakur”, there is no existence of “Sangha” though it is legally formed.”

Accordingly, the trial court had de-recognised the plaintiffs to be the Office Bearers. The Trial Judge had gone to order that the Governing Body and the Advisory Committee formed and prevalent at the time of defection of Sangha should unite together at one place for the purpose of election of Office Bearer of the Sangha. The Trial Judge not only passed order for fresh election with certain proposed amendment to the Bye Law, but also went a step ahead by directing the Assistant Registrar, Co-operative Society, to conduct election in a manner through secret Ballot and to submit compliance report to that effect.

6. The Trial Court having passed the decree in the aforesaid manner, the plaintiffs-respondents challenged the decree to the extent it directed the Assistant Registrar, Co-operative Society to hold the election of the Society, by filing RFA No.5 of 2003. The Defendant-Appellants filed RFA No.9 of 2003 challenging the findings and order of the Trial Court holding their election as invalid and declaring the Governing Body constituted at Balasore as the real Governing Body of Sangha.

7. The First Appellate Court disposed of both the Appeals by a common judgment whereby RFA No.5 of 2009 was allowed and RFA No.9 of 2009 was dismissed. During pendency of the Appeals, the Plaintiff-Respondents filed an application under Order-41 Rule-27 CPC to admit the certified copy of the judgment passed in Second Appeal No.51 of 1997 as an additional evidence by contending that the issue involved in the present suit between the parties being directly and substantially in issue in the suit out of which the second appeal was preferred before the High Court between the same parties, the judgment passed in the second appeal would operate

as *res judicata* between the parties and as such the same be admitted as Additional Evidence. The Appellate Court admitted the same as Evidence which was marked as Ext.65. It appears from the judgment of the Appellate Court that the said Second Appeal arose out of S.J. Appeal No.68 of 1994 where the judgment dated 07.10.1994 passed by the Civil Judge (Senior Division), Balasore in T.S. No.194 of 1990 was confirmed. The aforesaid suit was filed by the plaintiffs therein claiming to be the President and Secretary of Balasore Saraswata Sangha challenging the authority of Late Raghunath Pati, the elected Secretary of Plaintiff No.1 who transferred some properties at Balasore.

8. The Appellants besides all other contentions had raised the issue before the Lower Appellate Court that the Trial Court had no territorial jurisdiction to decide as to which out of the two elections for the Office bearers of the Sangha, one held at Balasore and the other held at Birtung was legal. The Lower Appellate Court on consideration of the materials on record held that the Trial Court had the jurisdiction to go into the question of

the validity of either of the election. On deciding the question of *res judicata*, the Appellate Court held that after dismissal of the Second Appeal No.51 of 1997 by the High Court, the validity of either of the elections held at Balasore vis-à-vis Birtung had reached its finality between the parties. The legal impact of such findings in the present suit which was substantially in issue in Title Suit No.194 of 1990. The findings rendered under Exts.57, 58 & 65 so far as the issue of election was binding and operative between the parties. The issue of election having been finally decided amongst the parties in the earlier suit, the same was not available to be re-agitated again being barred by the principle of *res judicata*.

9. While deciding Issue No.(IV) & (X), the Lower Appellate Court held that the 38th Sambilani of NSS, Puri at Balasore was legally convened whereas the parallel Sambilani at Birtung was without any legal sanctity. The further finding of the Appellate Court was that the selection of members to the Council of Management of Sakaha Sangha (Plaintiff No.2) by Biswanath Pradhan purported to have been made in exercise of the power as

President-cum-Parichalaka automatically became unauthorized. The Plaintiffs, on the contrary, had proved Ext.26 under which the Committee of Management of Cuttack Saraswata Sangha for the year, 1989-90 was formed. Thus the claim of the Defendant No.1 as the Office Bearer of the Cuttack Saraswata Sangha (Plaintiff No.2) was found to have not been established. So, the Defendant No.1's claim to the office of President is untenable, and consequently, the Parichaya Patras (Identity Cards) issued by him to the Devotees have been rightly found by the Trial Court to be invalid and inoperative.

10. The Lower Appellate Court also considered the Issue with regard to de-recognition of office bearers of Nilachala Saraswata Sangha by the Trial Court. While deciding such issue, the Appellate Court held that neither the Plaintiffs nor the Defendants in the Suit had sought for any Election through intervention of the Court. Such an approach made by the Trial Court was erroneous after having found the Plaintiffs' representation to the Sangha was legal and valid. It was not within the domain of the

Trial Court to again de-recognize them with a finding that they have violated the “Guru Parampara”. This view was not legally permissible to be done within the scope of the present suit where the Court was basically called upon to adjudicate the issues framed on the basis of the pleadings of the parties. The Court was not discharging the function of a Mediator or Arbitrator. By observing thus, the Appellate Court held that the findings arrived at by the Trial Court on Issues No.(I), (II) & (XI) are unsustainable. Thus the Title Appeal No.5 of 2009 was allowed and Title Appeal No.9 of 2009 was dismissed.

11. Assailing the judgment and decree passed in Title Appeal No.9 of 2003, the Appellants have filed RSA No.254 of 2004 and have also filed RSA No.255 of 2004 challenging the judgment passed in Title Appeal No.5 of 2003.

12. While admitting the Appeals, this Court vide order dated 19.01.2007 had framed the following substantial question of Law:-

“i) Whether non-compliance of Order-1, Rule-8 CPC with respect to the plaintiff No.1& 3, so far as it relates to Kendra Sangha elected in Birtung election and in absence of any recourse to Order-1 Rule-8 CPC with respect to members and office bearers of the Kendra Sangha to add those as defendants, renders the suit entirely defective and the judgment and decree passed by the trial court and confirmed by the First Appellate Court is a nullity?

ii) Whether, the conclusion of the First Appellate Court to the effect that the objection to the lack of territorial jurisdiction cannot be raised for the first time before the first appellate Court, is legally sustainable?

(iii) Whether the conclusion of the First Appellate Court regarding election of Raghunath Pati as Secretary, N.S.S. Kendra Sangha, Puri is hit by the principle of res judicata?”

13. Mr. S.S. Rao, learned counsel for the Appellants submitted that the plaintiffs having not complied with the procedure under Order-1 Rule-8 C.P.C. as to representation of the office bearer of NSS, Puri vis-à-vis the office bearers of Kendra Sangha elected at Birtung and the elected office bearers of NSS, Puri at Birtung, the suit was entirely defective and the judgment and decree passed by the Trial Court as confirmed by the First

Appellate Court should be declared as nullity. It was further submitted that the Trial Court as well as the First Appellate Court have adopted an erroneous legal approach in rendering the finding with regard to validity of the either of the election though they had no territorial jurisdiction to adjudicate the said issue. It was further submitted that the defendants have not waived their right of objection to the jurisdiction of the Civil Court at Cuttack to try the suit. He further submitted that mere absence of the pleadings in the written statement with regard to the fact that the Trial Court lacks jurisdiction to try the suit does not ipso facto confer jurisdiction on the Court to try and decide the issue where the Courts inherently lacked jurisdiction to go into that issue. Either of the Election held at Birtung and at Balasore having not been conducted within the territorial jurisdiction of the Cuttack Court, the Courts below should not have decided the question of election and rendered a finding in that behalf. It was further submitted that Section-21(1) of CPC has no application to the facts of the case inasmuch as no cause of action has arisen for the plaintiff to bring the

Suit at Cuttack though by challenging the validity of election a separate suit at Puri is still pending for Trial. Mr. Rao, the learned counsel further submitted that the finding of the Appellate Court that the judgment passed in Second Appeal No.51 of 1997 will operate as *res judicata* in so far as it related to the issue with regard to the question of election and the Lower Appellate Court has gone wrong in relying upon the judgment of the Second Appeal in Ext.65 to hold that the said judgment would operate as *res judicata* in the subsequent suits. According to Mr. Rao, the Appellate Court should have held that the judgment in Balasore Suit has no application to the present suit as none of the defendants or the office bearers elected at Birtung were parties in the said suit. The adjudication in Balasore Suit as referred to above having involved an issue with regard to the competency of Raghunath Pati to execute the sale deed in respect of the property in question at Balasore, the finding rendered touching the question of election of the office bearers of Nilachala Saraswata Sangha has no bearing in the present suit and the Appellate Court was in error in

holding that the judgment passed in Second Appeal would operate as *res judicata*.

14. Per contra, Mr. N.K. Sahu, learned counsel appearing for the Respondents supported the judgment and contended, inter alia, that there is no substantial question of law involved to be addressed in the present second appeals. It was submitted that the substantial question of law raised with regard to non-compliance of Order-1 Rule-8 CPC being essentially a matter of procedure to be complied with to the satisfaction of the Trial Court and the plaintiffs having complied with the same being duly permitted by the Trial Court, there was no defect in the suit and the judgment and decree passed by the learned Courts below cannot be faulted on that count. Relating to the jurisdiction of the Trial Court to decide the question of legality of the election, it was contended by the learned counsel for the Respondents that the question of jurisdiction cannot be raised for the first time in the Appellate Court since such question was dependent upon appreciation of evidence and pleadings of the parties. In support of such submission, the learned

counsel has relied upon a decision of this Court in the case of ***Shyam Sundar Mohapatra Vrs. Janaki Ballav Pattnaik & others***, reported in AIR 1990 Orissa 23. The learned counsel also submitted that though no specific issue was framed on the question of *res judicata* by the Trial Court, the same can be raised and tried in the Appellate court if that issue is known to the parties and the evidence led to that effect. In support of such submission reliance has been placed on a decision of the Apex Court in the case of ***Swami Atmananda & others Vrs. Sri Rama Krishna Tapovanam & others***, reported in (2005) 10 SCC 51 and in the case of ***Sardul Singh Vrs. Pritam Singh & others***, reported in (1999) 3 SCC 522.

15. The rival contentions of the learned counsel for the parties require careful consideration. I have heard the learned counsel for the parties at length and perused the judgments impugned and other materials available on record.

16. Before answering the substantial question of law as formulated, it would be apt to notice the law relating to the scope of interference with the concurrent findings of

the Courts below by the High Court under Section-100 CPC. The Apex Court in the case **Navaneethammal Vrs. Arjuna Chetty**, reported in AIR 1996 SC 3521 has authoritatively held that interference in the concurrent findings of the Courts below by the High Courts under Section-100 CPC must be avoided unless warranted by compelling reasons, and in any case, the High Court is not expected to re-appreciate the evidence just to replace the findings of the Lower Courts. The Supreme Court also went on to hold that even assuming that another view is possible on re-appreciation of the same evidence, that should not be done by the High Court as it cannot be said that the view taken by the First Appellate Court was based on no material. Keeping in mind the law laid down by the Supreme Court, let me examine the correctness of the rival contentions.

17. Undisputedly, Plaintiff No.1 was a society registered under the provisions of Societies Registration Act and it had a Bye law. Section-6 of Societies Registration Act provides that every society registered under the Act may sue or be sued in the name of the

President, Secretary or Trustees as shall be determined by the Rules, Regulations of the Society. Clause-15 of the Bye Law provides that Secretary may represent the Sangha in all revenue, civil and criminal Courts. The Plaintiff No.1 being represented by its Secretary having filed the Suit, there was no need of compliance with the provisions under Order-1 Rule-8 CPC. Similarly, Plaintiff No.2 is also a registered Saka Sangha of Kendra Sangha and Plaintiff No.3 was representing the Kendra Sangha as well as Sakha Sangha being its elected President. The Bye-Law of Kendra Sangha provides that the office bearers of Sakha Sangha would function as the custodian of Asanamandira and Sakha Sangha on behalf of Kendra Sangha. Once a Society is registered, it enjoins the status of legal entity apart from its member constituting the same and is capable of suing or being sued. Therefore, a registered society can sue or be sued without taking recourse of Order-1 Rule-8 CPC. The relief claimed in the Suit revolves around the question of authority of the Defendant No.1 to issue a Parichaya Patra to other defendants and the persons who are large in number. As

it appears, the defendant No.1 to 20 had been impleaded as the representatives of all the disputed Parichaya Patra holders having the same interest in purported compliance with the provisions under Order-1 Rule-8 CPC. It further appears from the record that the Trial Court had accorded permission for the above purpose, and accordingly, at the instance of the Plaintiff notice was issued to the Defendants and paper publication was made in compliance with the provisions of Order-1 Rule-8 to satisfy the requirement of Order-1 Rule-8 CPC. Such compliance having not been objected to either in the Trial Court or in the Lower Appellate Court, the contention questioning the same cannot be permitted to be raised at the stage of second appeal. Therefore, the Question No.1 formulated as the substantial question of law is answered accordingly.

18. The question of law under Question No.2 relates to territorial jurisdiction. It transpires from the record that the Lower Appellate Court has come to the conclusion that the defendants had not raised such objection challenging the territorial jurisdiction of the Court. It was

submitted by Mr. Rao that the Trial Court so also the Appellate Court adopted an erroneous approach in rendering the finding with regard to the validity of either the election at Birtung or the election at Balasore, though the learned Courts below had no territorial jurisdiction to adjudicate such a question. Refuting such submission and placing reliance on Section-21 of the Code of Civil Procedure, it was submitted by Mr. Sahu, the learned counsel for the Respondents, that unless objection with regard to lack of jurisdiction was taken at the first instance and at the earliest opportunity, such objection shall not be permitted to be raised in Appellate or Revisional forum. He claims support from the judgment of the Apex Court in the case of **Harshad Chimanlal Modi – Vrs. DLF Universal Ltd. & another**, reported in (2005) 7 SCC 791 wherein it was held that objections as to territorial and pecuniary jurisdiction have to be taken at the earliest possible opportunity and in any case before settlement of issues and the same cannot be allowed to be taken at a subsequent stage. The Lower Appellate Court on appreciation of the facts and the law has come to a

categorical finding that the Defendants had not raised such objection relating to lack of territorial jurisdiction before the trial Court. Such finding recorded by the Lower Appellate Court, in my considered view, does not suffer from any error of law warranting interference. It is needless to say that to resolve the controversy between the parties in relation to the relief prayed for in the Suit, undoubtedly, the question of election of the year 1989 was directly and substantially in issue to be gone into as the same was an integral part of the cause of action. As such, the learned Courts below have not committed any jurisdictional error in going into the legality of the question of election. The Question No.2 is answered accordingly.

19. The substantial question of law formulated vide Question No.3 was that the conclusion of the First Appellate Court regarding election of Raghunath Pati as Secretary, NSS, Kendra Sangha was hit by the principles of *res judicata*. Mr. Rao, the learned counsel for the Appellants, strenuously submitted that the Lower Appellate Court was in error in relying upon the judgment

in Second Appeal No.51 of 1997 under Ext.65 to arrive at a conclusion that the same would operate as *res judicata* in the subsequent suits. According to Mr. Rao, the judgment in Balasore Suit has no application in the present suit as none of the Defendants or the office bearers elected at Birtung were parties to the Suit inasmuch as the same has no bearing with the present suit. Mr. Sahu drawing attention of this Court to Explanation-VI to Section-11 CPC submitted that in order to sustain the plea of *res judicata*, it was not necessary that all the parties to the two litigations must be common. It was his contention that all that was necessary was that the suit should be between the same parties or between the parties under whom they or any of them claim litigating. In support of such contention, Shri Sahu has placed reliance on the decisions of the Apex Court in the cases of ***Iswar Das Vrs. State of Madhya Pradesh & others***, reported in AIR 1979 SC 551, ***Narayan Prabhu Venkateswar Prabhu -Vrs.- Narayana Prabhu Krishna Prabhu***, reported in AIR 1977 SC 1268, and ***Commissioner of Endowment & others vrs. Vittal Rao***

& others, reported in AIR 2005 SC 454. The judgment passed in Title Suit No.194 of 1990 and the judgment passed in S.J. Appeal No.68 of 1994 were marked as Ext.57 & 58, and the question of election of office bearers of Plaintiff No.1 was directly and substantially in issue in Title Suit No.194 of 1990. It goes without saying that the same issue has been decided in favour of the Plaintiffs where Nilachala Saraswata Sangha was a party. The judgment passed in Title Suit No.194 of 1990 was confirmed by this Court in Second Appeal No.51 of 1997 and the Special Leave Petition filed thereunder was also dismissed. Therefore, the decision rendered in earlier suit was binding on each and every member of Nilachala Saraswata Sangha. Therefore, I am in complete agreement with the finding recorded by the learned Lower Appellate Court that the said judgment would operate as *res judicata* so far as the issue relating to election as involved in the present suit is concerned. The substantial Question No.3 is answered thus.

20. Having arrived at the aforesaid conclusions, I am of the considered view that the present Appeals do not

involve any substantial question of law which requires interference. Accordingly, both these Appeals are dismissed. But there shall be no order as to costs.

21. Urgent certified copy be granted on proper application.

(S.Pujahari)
Judge

Orissa High Court, Cuttack.
The 20th day of September, 2022/MRS

