

IN THE HIGH COURT OF ORISSA AT CUTTACK

RSA No.163 of 2009

Ashok Kumar Kar & Others

....

Appellants

Mr.D.P. Mohanty, Advocate

-versus-

Sri Sridhar Dey & Others

....

Respondents

CORAM:

MR. JUSTICE D.DASH

ORDER

23.02.2022

Order No.

- 06.
1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
 2. The Appellants, by filing this Appeal under section 100 of the Civil Procedure Code (for short, 'the Code'), have assailed the judgment and decree dated 04.02.2009 and 11.02.2009 respectively passed by the learned Ad hoc Additional District Judge, FTC-II, Balasore in T.A. No.52/36 of 2001/1994.
 3. For the sake of convenience, in order to avoid confusion and bring in clarity, the parties hereinafter have been referred to, as they have been arraigned in the Suit.
 4. The Deity Shree Shree Durga Devi Thakurani Prachinha-1 Bije, Mouza-Chhatrapur through its Marfatdar Srinibas Kar had filed the suit as the Plaintiff. It is the case of the Plaintiff that the Deity has its properties and all are under the management of the Marfatdar, who uses to utilize the income from out of the same for the puja and other expenses for the Deity.

In the said suit, it has been prayed to declare that the decree obtained by one Basidhar Kar (Defendant No.2) against Sk. Abdul (Defendant No.19) in O.S. No.25 of 1983 is inoperative and not binding on the Plaintiff-Deity. Further prayer has also been made for grant of injunction against Defendant No.2 restraining him from realizing the house rent from Defendant No.19 on the strength of the said decree.

It is said that the Plaintiff-Deity is the family Deity of Tambuli community residing in Soro and worshiped by him from the time immemorial. No permanent Deity has been installed, but every year, at the time of Durga Puja, Devi Pratima is made of clay and worshipped and then immersed on the Day of Dussehera. The pandal is made over the land appertaining to M.S. plot no.199 and the land under plot is Plot No.200 in M.S. Khata No.95 adjoins the same. Those in total measure Ac.0.11 decimals. The land has been recorded in M.S. ROR in the name of Deity though the Marfatdars of Tambuli community or Sampradaya or Sangha. That property was purchased by predecessor of Plaintiff No.2 and other Defendants of Kar family, Dey family, Nandi family and Guin family in the year 1954 as Marfatdars of the Deity and they stood as vendees. It is stated that among those Marfatdars Sachindra Kar, Bhaga Dey and Prahallad Dey were also the vendors. There were some rented houses in that purchased land belonging to the Deity. The rent collected from the said houses is being utilized towards puja expenses of the Deity. Over that property, each have 1/12th Marfatdari right. There being a subsequent dispute amongst the successor-Marfatdars regarding collection of rent and management of the puja, the suit has been filed.

The Defendant No.1 has filed the written statement. Defendant Nos.7 and 8 filed their joint statement. The Defendant No.1 as well as Defendants 7 and 8 advanced their respective counter claims.

While denying the plaint averments, the Defendant No.1, in his counter claim, stated that these Plaintiffs-Deity does not belong to Tambuli community, Soro but a branch or representative or family Deity of the Plaintiff No.2 and other Defendants of Kar family. Ramahari Kar, the common ancestor of Kar family constructed a pucca pandal with a roof over there for the Deity and performance of puja. On 17.01.1911, he dedicated some properties to the Deity by a registered Samarpana Patra or a Trust Deed as described in Schedule-Ka of the counter claim. As per the terms of the same, the eldest member of that family was to remain in the management of the Deity and its property. After Ramahari Kar, his eldest son Prahallad Kar became the Managing-Marfatdar of the Deity and from the fund of the Deity, he purchased 'kha' schedule property as indicated in the counter claim in the name of the Deity. On the death of Prahallad Kar, his eldest son Madan Mohan acted as Managing Marfatdar and he purchased the property described in Schedule-Ga of the counter claim using funds of the Deity property. Subsequently, in view of the congestion of the worship place of the Deity created by Ramahari Kar; Prahallad Kar started puja of another Durga Devi deity at a little distance. It was on the thatched plandal over a piece of land under M.S. Plot no.199 measuring Ac.0.06 decimals and plot no.200 measuring Ac.0.05 decimals.

The Defendant No.1 claims that as per the terms of the Trust Deed, he being the eldest member of the Kar family, is entitled to manage the affairs of both the Deities and their properties. It is stated that although a compromise decree was passed in O.S. No.55 of 1959 in respect of the Deity's properties, the same is not binding on him. With such pleadings, he prayed for declaration that the subsequent Durga Devi Deity be declared as the representative of the Deity of the Kar family and the Plaintiff No.2 and Defendant No.1 to 4 be declared as real Marfatdars of the Plaintiff-Deity. He also prayed that Defendant No.1 being the eldest member of the branch of Kar family, be declared as the managing Marfatdar.

5. Defendants 7 and 8, while traversing the plaint averments, in their counter claim, stated that the Plaintiff-Deity is not the family Deity of Tambuli community but the Deity of Dey family. Their specific case is that one family member of Dey family, namely, Hara Dey had started this Durga Puja over a portion of her own homestead land recorded under C.S. plot nos.192 and 193 under khata nos.2 and 3 corresponding in Mouza-Chhatrapur corresponding to C.S. Plot No.199 and 200 under khata no.95 and from there onwards, they have been performing the puja of the Deity as their family Deity. Bidei Devi instituted O.S. No.46 of 1927 against Prahallad Kar and others in respect of those two plots of land as above and there was a decree to that effect. In the counter claim, these Defendants have sought for a declaration that the Plaintiff Deity be declared as their family Deity.

6. The Plaintiff did not file any written statement against the counter claim of Defendants 7 and 8 although written statement was filed by the Plaintiff as against the counter claim of Defendant No.1 denying the story as to the communication of the Durga Puja of second Deity by Prahallad Kar etc.

7. Defendant No.6(ka) and (ga) jointly filed the written statement against the counter claim of Defendant No.1 and Defendant Nos.7 and 8 stating that the Plaintiff-Deity and family Deity of Kar family descending from Ramahari Kar are not one and the same but two separate Deities. They state that the Plaintiff-Deity belongs to Tambuli Community.

8. The Trial Court, on the above case projected by the parties, framed as many as eight issues. Issue Nos.3 and 4 as to whether the Plaintiff-Deity and the family Deity of Kar family are one and the same and whether the Plaintiff-Deity is the representative or the branch Deity of Kar family, upon consideration of the evidence and on their analysis, the answers have been rendered against the case of the Defendant No.1 and specifically in respect of issue no.4 as to whether the Plaintiff-Deity has been established by Defendant No.1 family or by Tambuli community, the answer has been recorded against Defendant No.1, Plaintiffs, Defendant No.7 series as well as Defendant No.8.

It has been held that the Plaintiff-Deity neither belongs to Kar family nor Dey family nor to Tambuli Community or Sangha. Having held, as above, the Plaintiff having withdrawn the suit; the counter claim of Defendant No.1 and Defendant Nos.7 and 8 have been dismissed.

Being aggrieved by the result in the suit, an Appeal under Section 96 of the Code has been filed. The First Appellate Court, on evaluation of the evidence, has held that the Plaintiff-Deity belong to Dey family and in that view of the matter, the First Appellate Court allowed the counter claim of Defendant No.7 series and Defendant No.8.

9. Heard learned counsel for the Appellants in the matter of admission of this Appeal.

Keeping in view the submissions made, I have gone through the judgments passed by the Courts below.

10. The Defendant No.1 claimed the Deity and its endowment to be belonging to Kar family which is not supported by the Plaintiffs. In the year 1927, Bidei Dey had filed one suit and it was not contested. The right of Bidei and successor over the Deity and its endowment thus was recognized in that decree. The Plaintiffs had not contested the claim of Defendant Nos.7 and 8. In view of said decree and evidence on record, the First Appellate Court is not found to have not committed any such error in declaring that the Plaintiffs-Deity belongs to the Dey family. Thus, this Court finds th no such substantial question of law arises in this case for being answered in this Appeal.

11. Accordingly, the Appeal stands dismissed. No order as to costs.

**(D. Dash),
Judge.**