

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.495 of 2005

In the matter of appeal under Section 100 of the Code of Civil Procedure assailing the judgment dated 12.07.2005 passed by the learned Additional District Judge, FTC No.3, Bhubaneswar in R.F.A. No.3/7 of 2004 confirming the judgment dated 01.03.2004 passed by the learned Civil Judge, Junior Division, Bhubaneswar in T.S. No.22 of 2002.

Pradeep Kumar Mohanty & Others* *Appellants

-versus-

***Sri Sri Lord Lingaraj
Mahaprabhu, Bije Bhubaneswar
Marfat Trust Board, represented
by the Executive Officer* *Respondent***

**Appeared in this case by Hybrid Arrangement
(Virtual/Physical Mode):**

***For Appellants* - Mr.S.P.Misra, Sr. Advocate**

***For Respondent* -**

CORAM:

MR. JUSTICE D.DASH

Date of Hearing : 13.07.2022 : Date of Judgment:01.08.2022

D.Dash,J. The Appellants, by filing this Appeal under Section-100 of the Code of Civil Procedure, 1908 (for short, 'the Code'), have assailed the judgment dated and decree passed by the learned Additional District Judge, FTC No.3, Bhubaneswar in R.F.A. No.3/7 of 2004.

By the same, the Appeal filed by the present Appellants (Defendants) under Section 96 of the Code has been dismissed and

thereby, the judgment dated 01.03.2004 passed by the learned Civil Judge, Junior Division, Bhubaneswar in T.S. No.22 of 2002 have been confirmed.

The present Respondent, as the Plaintiff, has filed the suit seeking declaration of sale deed dated 18.01.2000/19.01.2000 as void, illegal and not binding on the Plaintiff and for declaration that the Trust Board of the Respondent (Plaintiff-Deity) be declared as the Marfatdar of the Respondent (Plaintiff-Deity) in respect of the suit schedule property in place of Appellants 3 to 10 (Defendants 3 to 10). The suit having been decreed, these Appellants, being the aggrieved Defendants, having carried an Appeal, have been unsuccessful.

2. 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 Trial Court.

3. The Plaintiff's case is that the Plaintiff (Lord Lingaraj Mahaprabhu), a Hindu Public Religious Institution governed and managed by a Scheme of 1952 formulated under the Hindu Religious Endowment Act, is represented through the Trust Board by its Executive Officer or/and Additional Executive Officer. The Defendants 3 to 10 are the Badu Sevaks of the Plaintiff-Deity. It is stated that Defendants 3 to 10 alienated the landed property of the Plaintiff-Deity to Defendant

No.1 through Defendant No.2. The suit schedule property is said to be a Debottar land. The suit land being within the erstwhile ‘Moghul Bandi’ area, ‘Sriman Bharat Samrat’ was reflected as the Zamindar in the record of right of 1929-30. Under said Zamindar, the Plaintiff-Deity, Lord Lingaraj Mahaprabhu Bije, Bhubaneswar was the tenant. The suit land is said to be an intermediary property of Lord Lingaraj Mahaprabhu, the Plaintiff. The said Deity being a perpetual minor, had/has always been represented through his Sevak as Marfatdar which was/is also shown in the records of right relating to the suit land. The suit land being reflected as the property of Lord Lingaraj Mahaprabhu, Bhubaneswar, the Plaintiff, it had been granted to the ancestors of Defendants 3 to 10. The schedule property was managed and the usufructs thereof were being enjoyed by Sevak Marfatdars in lieu of their service to the Plaintiff-Deity. It is thus stated that the suit property is neither partible nor transferable. In the record of right of 1962 settlement, the suit schedule property stood recorded in the name of the Plaintiff-Deity as a tenant under the Government of Orissa with the status as “Debottar Rafa Tanki Stitiban” represented by the then Marfatdar Parikhita Badu, S/o-Laxman Badu of Mouza-Bhubaneswar. Subsequent thereto in the current settlement, the suit schedule property in the record of right has been recorded in the name of Lord Lingaraj

Mahaprabhu as tenant under Government of Orissa under Stitiban status represented by Defendants 3 to 10 as Marfatdars. It is stated that Defendants 3 to 10 are merely the Badu Sevaks of Lord Lingaraj Mahaprabhu. Hence, they and their ancestors were enjoying the property in lieu of service that they were rendering to the Plaintiff-Deity.

The Defendants 3 to 10, without the knowledge of the Plaintiff, executed a general Power of Attorney in favour of Defendant No.2 to sell their personal landed properties along with the suit schedule property. Said Power of Attorney is dated 13.12.1999. The Defendants 3 to 10 then filed an application before the Bhubaneswar Development Authority vide BPBA No.2129 of 1999 seeking permission under section 16(3) of the Orissa Development Authorities Act, 1982 to construct the residential building over the suit schedule property. On 18.01.2000, the Defendant No.2 executed a registered sale deed in favour of Defendant No.1 on the strength of said Power of Attorney executed by Defendants 3 to 10 in his favour for sale of the suit schedule property as also other properties. It is stated that Defendants 3 to 10 thus transferred the suit property in favour of Defendant No.1 through their Power of Attorney (Defendant No.2) as if the same is their personal property. It is further stated that Defendants 3 to 10 suppressed the material facts as to the right, title and interest of the Plaintiff-Deity over

the suit property before the Registering Authority and managed to get the sale deed registered stating that the suit schedule property is not Debottar property. It is said that thereby they circumvented the provision of Section 19/19-A of the Orissa Hindu Religious Endowment Act, 1951. For said suppression, the sale deed dated 18.01.2000 is attacked to be invalid and void. Therefore, it is said that said sale deed is not binding upon the Plaintiff-Deity. The Defendant No.1, having obtained said sale deed, filed one mutation case, which stood registered as Mutation Case No.1285 of 2000 before the Tahasildar, Bhubaneswar to delete the name of Lord Lingaraj Mahaprabhu (Plaintiff) from the record of right of the current settlement concerning the suit land. Filing of mutation case by Defendant No.1 is said to be with an evil intention. When the mutation case was pending, the Planning Member, Bhubaneswar Develop Authority vide order dated 23.10.2000 granted permission under section 16(3) of the Orissa Development Authorities Act, 1982 to Defendants 3 to 10 to construct the residential house over the suit schedule property imposing a condition that Defendants 3 to 10 are to obtain clearance from the Endowment Commissioner before building plan over the sub-divided plot plots is applied for permission. The Defendant No.1, being aggrieved by the said order, filed a writ application before this Court, which stood registered as OJC No.2160 of

2001. This Court, by order dated 15.07.2001, permitted the Defendant No.1 to withdraw the said writ application in order to file an Appeal under section 18 of the ODA Act. The Plaintiff then filed an Appeal, which was numbered as Appeal Case No.188 of 2001 and then the Defendant No.1 also filed another Appeal, which stood numbered as Appeal Case No.189 of 2001. The Appellate Forum, in its order dated 07.12.2001, directed the Plaintiff to agitate the issue of its right, title and interest over the suit property before the competent Civil Court and submit the order for final decision in Appeal Case No.188 of 2001.

It is stated that the Plaintiff-Deity has the right, title and interest over the suit property and that cannot be questioned in view of the successive recording of the suit land in the name of the Plaintiff-Deity. The Sevak Marfatdars like Defendants 3 to 10 have alienated suit property to Defendant No.1 through their Power of Attorney (Defendant No.2) as if they are the owners of the suit schedule property and not the sevaks of the Plaintiff-Deity. Such alienation is said to have made the Defendants 3 to 10 ineligible in continuing as Marfatdars of the Plaintiff-Deity. Therefore, it is prayed that the Trust Board of the Plaintiff-Deity Lord Lingaraj Mahaprabhu be declared as Marfatdar in place of Defendants 3 to 10.

4. The Defendants 1, 3, 4, 9 and 10 contested the suit. Those Defendants, having filed the written statement, the Defendant No.1 has adopted the same.

It is the case of the Defendants that one Parikhita Badu, from his personal income, as a Yatri Panda, had acquired substantial properties in Baramunda and Siripur, which include the suit property measuring Ac.1.117 decimals under khata no.623. He had also acquired property measuring Ac.1.773 decimals under khata no.57 in that village, which have been sold by sale deed 18.01.2000. It is further stated that said Parikhita had acquired other properties in that village under khata no.51 and 58 besides other properties in other villages. All these properties are said to be the self-acquired properties of Parikhita and as such he was in enjoyment of the same till his death in the year 1954. Thereafter, his son possessed the same till he died in the year 1980. The Defendant No.3 also says to have possessed and enjoyed the same for self and as guardian of her minor children, who are Defendants 4 to 10. It is said that none of them had possessed the property as Marfatdars of the Plaintiff-Deity in lieu of rendering Seva to the Plaintiff-Deity. Parikhita did not, however, notice the erroneous entry remaining in the record of right of 1929-30 in respect of the suit land describing the Plaintiff as the occupancy tenant under his Marfatdarship. The suit land is or was never the “Seba Land” of

the Plaintiff-Deity in lieu of any Seva to the Plaintiff. The Seva land of the Plaintiff-Deity and intermediary interest in other villages, after vesting was recorded as Bebandobasta land under Government in Consolidation Record of Right 1979 with about 58 sevakas including late Parikhita Badu. It is stated that the Plaintiff-Deity never owned or possessed any land in Village-Baramunda. By mistake, the suit land is said to have been recorded in the name of the Plaintiff showing Parikhita as its Marfatdar. The Plaintiff-Deity is said to have never treated the suit land as its property at any time and never paid rent to the Government. Erroneous entries in respect of the suit land in the record of right of 1929-30 settlement had been reflected and that was also so reflected in the record of right of 1962 and 1988. After the death of her husband, the Defendant No.3 being an illiterate widow also could not notice the erroneous entries. Further, it is said that such erroneous entries cannot extinguish the right, title interest and possession of the original owner, Parikhita Badu and his legal heirs in respect of the suit properties. The suit land was never dedicated to the Plaintiff-Deity and it was never owned and possessed by the Plaintiff-Deity at given point of time. Plaintiff has never treated the suit land as Religious Endowment. It is said that question of granting the suit land by the Plaintiff to the ancestors of Defendant Nos. 3 to 10 in lieu of rendering any service to the Plaintiff-

Deity does not arise. The Record of Rights of 1929-30, 1962 and 1988 showing the suit land to be belonging to the Plaintiff-Deity for whom the ancestors of Defendants was the recorded Marfatdars have absolutely no foundation. The records are either erroneous or nominal and by that, no title in favour of the Plaintiff-Deity or liability against the Defendants nor their ancestors arises.

5. On the above rival pleadings, the Trial Court has framed five issues. Taking up issue nos. 3 & 4 as regards the competing claim of right, title and interest over the suit land by the parties, the Trial Court, upon examination of evidence and their evaluation, has answered that the Plaintiff-Deity, Lord Lingaraj Mahaprabhu has the right, title and interest over the suit land and said are not the personal properties of Parikhita Badu and Defendant Nos. 3 to 10 and those were given by the Plaintiff-Deity to Parikhita Badu in lieu of the service to the Plaintiff-Deity as Badu Sevak.

Then coming to the next issue as to whether the suit land is Debottar land, the Trial Court has found the same in favour of the Plaintiff-Deity in specifically saying that the properties are not the personal properties of Defendants 3 to 10. Having answered the above issues, as aforesaid, on the next issue with regard to the validity of the sale deed basing upon the Power of Attorney in relation to the suit

property; the finding of the Trial Court is that such transfer of Debottar property by Defendants 3 to 10 through their Power of Attorney holder, the Defendant No.2 is void and illegal. All these answers have finally led the Trial court to hold that the Trust Board of the Plaintiff-Deity Lord Lingaraj Mahaprabhu are the Marfatdars. The suit has finally been decreed and the following order has been passed:-

“The suit of the Plaintiff is decreed on contest against deft. No.1, 3, 4, 9 & 10 and exparte against other Defendants but in the circumstances without any cost. The Sale Deed no.201 dt. 18.1.2000/ 19.1.2000 is hereby declared to be void and illegal and the same is not binding on the Plaintiff in any manner. The trust board of the Plaintiff-Deity is declared to be the Marfatdar of the suit schedule property henceforth instead of deft. Nos.3 to 10.”

6. The Defendants, being aggrieved by the said judgment and decree passed by the Trial Court, having carried the First Appeal have been unsuccessful and thus are under sufferance of the judgments and decrees passed by the Courts below.

7. Mr. S. Misra, learned Senior Counsel for the Appellants submitted that the findings of the Courts below on all those issues are unsustainable as those have been rendered against the weight of the evidence both oral and documentary on record. He further submitted that the evidence on record, being taken into account in their proper

perspective, here in the case, the finding ought to be that the suit properties are not the Debottar properties but the properties of the Defendants. It was further submitted that the Courts below simply been swayed away by the records of right and without taking note of the evidence that the Defendants are in possession of the property all along as of their own right in exercising all such rights of ownership thereon have erroneously held against the case/claim of the Defendants. He, therefore, submitted for admission of this Appeal to answer the above as the substantial questions of law.

8. Keeping in view the submissions made, I have carefully read the judgments passed by the Courts below.

9. The specific stand that the Defendants have taken in the written statement is that the suit property had been acquired by late Parikhita Badu and all are his self-acquired property, which he possessed and enjoyed till his death in the year 1954 whereafter his son possessed the same till his death which took place in 1980. It is also stated that none of the owners have possessed the suit property as Marfatdars of the Plaintiff-Deity in lieu of rendering any Seva to the Plaintiff-Deity.

It is the case of the Plaintiff-Deity that the suit property then in Mouza-Siripur was under Zamindar 'Sri Bharat Samrat', which stood reflected in the record of right of 1929-30 and the Plaintiff-Deity was a

tenant under it. In 1962 settlement, the records relating to the suit lands shows the status of the land as “Debottar Rafa Tanki Stitiban” under Zamindar i.e. Orissa Government. The Status of the said land finds mention as Stitiban in the record of right of 1989 settlement. It is stated that Parikhita Badu was the Marfatdar of said property on behalf of Plaintiff-Deity, the perpetual minor. The record or right of 1929-30 settlement has been admitted in evidence and marked as Ext.3 and that of the year 1962 is Ext.4 whereas the record of right of 1989 settlement has been admitted in evidence and marked as Ext.5. In this way, Plaintiff explains that Parikhita Badu being the Marfatdar rendering service to the Plaintiff-Deity, he was in possession of the same and the Defendants 3 and 10 being his successors came to manage the suit property enjoying its usufructs in lieu of the service that they were rendering to the Deity as Badu Sevaks. These records thus in no unclear terms show that the recorded tenant of the suit land is the Plaintiff-Deity. The Defendants 3 (Parikhita Badu) and after him, his legal representatives have been shown as Marfatdars of the Plaintiff-Deity in the said record of rights. In addition to this, the Defendant No.3, being examined as D.W.1, has stated that she and other Defendants are the members of the Sevak family of the Plaintiff-Deity and the Sevaks of the Plaintiff-Deity used to get the landed property for cultivation and

enjoyment for rendering services to the Plaintiff-Deity. Not a scrap of paper has been filed and proved from the side of the Defendants to show that the property was the self-acquired property of Parikhita Badu. The evidence of D.W.1 thus is clear that the suit land was being possessed and enjoyed by Parikhita Badu and thereafter his legal representatives in lieu of the service that they were rendering towards the Plaintiff-Deity.

In that view of the matter, non-proving the basis or foundation for preparation of the record of right under Ext.3 to 5 has no legal significance. Fact remains that such records of right have never been challenged either of Parikhita Badu or his legal representatives claiming through him at any given point of time till they raised their defence for the first time in the present suit after lapse of about seven decades or more by then. In such state of affairs in the evidence, the Courts below are found to have rightly presumed the records of right to be correct and when the Defendants 3 to 10 have failed to prove their independent title over the suit property, the findings that the suit land is the property of Plaintiff-Deity, Lord Lingaraj Mahaprabhu and not the personal property of late Parikhita Badu and his successor is well in order and as such unassailable.

9. Coming to the status of the land in the record of right of the year 1962 (Ext.4), the suit properties have been noted under the status

“Debottar Rafa Tanki Stitiban”. Remaining unchallenged and that is only questioned by the Defendants in this suit instituted in the year 2002. The Defendants by simply saying that such entries in respect of the suit land in the record of right of the year 1962, 1988 were not noticed cannot wriggle out of the same taking advantage in saying that the Plaintiff-Deity has failed to prove the foundation of such entries in those document; more particularly when they have not been able to show any record that the properties are their personal properties when their possession and enjoyment of the suit property has been well explained through acceptable evidence let in by the Plaintiff-Deity.

In view of all the aforesaid, this Court finds that the Courts below have rightly answered all those issues in favour of the Plaintiff-Deity in finally decreeing the suit as aforestated. Therefore, the submission of the learned Senior Counsel for the Appellants that the Appeal merits admission to answer the substantial questions of law, as pointed out, cannot be countenanced with.

11. Resultantly, the Appeal stands dismissed. There shall, however, be no order as to cost.

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

Basu