

(2006) 10 OHC CK 0047

Orissa High Court

Case No: None

Sri Ramaballav Das

APPELLANT

Vs

Sri Dhyan Chandra Das

RESPONDENT

Date of Decision: Oct. 19, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 9

Citation: (2007) 103 CLT 199 : (2007) 1 OLR 109 Supp

Hon'ble Judges: A.K. Parichha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

A.K. Parichha, J.

This second appeal is directed against the judgment dated 20.09.1991 passed by the Learned 2nd Addl. District Judge, Puri in Title Appeal No. 33/88 of 1990 confirming the judgment dated 31.8.1990 passed by Learned Subordinate Judge, Puri in Title Suit No. 120 of 1988.

2. The Respondent as Plaintiff filed the above noted suit with the following pleadings:

The Radhakanta Math situated at Balisahi, Puri town is a public religious institution belonging to Madhwa Gaudeswar Baishnab Cult. It has no deed of endowment or grant indicating line of succession to the office of the hereditary trustee of the Math, but as per convention the succession to the office of Mahanta is hereditary and devolves upon the chief disciple of the reigning Mahanta in the absence of any appointment made by him. The last Mahanta, namely, Mahanta Goura Govinda Das succeeded to the Gaddi of the Math by inheritance in the absence of any nomination to that effect by the then reigning Mahanta Biswambar Das Goswami. Though Mahanta Biswambar Das Goswami gave Kama Mantra to the Plaintiff while he was very young, Mahanta Goura Govinda Dos Goswami after succeeding to the

Mahantship of the Math initiated the Plaintiff to Baishnab Cult, gave him Dikshya, Kanthi and Koupin and accepted him as a practicing disciple. Mahanta Goura Govinda Das Goswami then nominated the Plaintiff as his successor and on 19.11.1974 intimated the fact of nomination in writing vide Ext. 9/a to the Commissioner of Hindu Religious Endowments (in short, "the Commissioner") as required u/s 39 of the Orissa Hindu Religious Endowments Act, 1951 (in short, "the Act") and since the Commissioner wanted a testament to that effect, Mahant Goura Govinda Das Goswami executed a registered Will (Ext.3) on 23.7.1975/25.7.1975 bequeathing the Mahanti of the Math in favour of the Plaintiff and supplied a copy of the Will to the Commissioner. The Commissioner on receipt of the above noted documents and on being satisfied about the genuineness of the nomination acknowledged it in his order dated 6.01.1976, vide Ext. 14/b recognizing the Plaintiff as the heir apparent to the Gaddi of the Math. Mahanta Goura Govinda Das Goswami breathed his last on 13.11.1985 and the Plaintiff performed his obsequies and other ceremonies where after on 25.11.1985 the Gaddi-nashini ceremony of the Plaintiff as the Mahanta of the Math was performed in presence of respectable persons of the locality including the Mahants, Mathadhis of other religious institutions and the Plaintiff functioned as Mahanta of the Math since then. When the matter stood thus, the present Appellant filed an application Under Sections 36 and 39 of the Act before the Commissioner to recognize him as the Mahanta of the Math. The Commissioner after considering the evidence and submissions of the respective parties in his order dated 5.4.1988 passed in O.P. No. 212 of 1986 (Ext. G) directed the parties to establish their respective rights to the office of the hereditary trustee of the Math in the Civil Court as per the provision of Section 39 of the Act, there by compelling the Plaintiff-Respondent to file the suit for a declaration that he is the hereditary trustee and Mahanta of Sri Radhakanta Math, Puri.

3. The Appellant as Defendant in his written statement took the following pleadings:

The late Mahanta Goura Govinda Das Goswami had initiated the Defendant to the Baishnab Cult as his Chella when Defendant was a young boy of 9 years by giving him Kanthi and Koupin and the Defendant thereafter lived with the Mahanta in the Math and assisted him in his religious duties and functions and the late Mahanta being impressed with the sincerity and devotion of the Defendant nominated him as his successor, but could not intimate the factum of nomination in writing to the Commissioner during his life time. After death of the reigning Mahanta Goura Govinda Das Goswami the Defendant performed his obsequies and was there after installed on the Gaddi of the Math as Mahanta in presence of several Mahants and Saddhus of sister institutions.

Denying the claim of the Plaintiff it was specifically pleaded that the Plaintiff is the Chella of late Mahanta Biswambar Das Goswami, the predecessor of Goura Govinda Das Goswami and that he is never the Chella of late Goura Govinda Das Goswami and Goura Govinda Das Goswami never nominated him as his successor to the

Gaddi. It was also pleaded that the nomination Ext.4/b and the testament, Ext.3, in favour of the Plaintiff are forged documents created by the Plaintiff in order to garb the Math properties. It was further indicated in the W.S. that the Plaintiff as interim trustee misappropriated the Math properties and indulged clandestinely in sexual pleasure with two young women named, Chanda and Apsara and these facts were established during preliminary enquiry Conducted by the Deputy Commissioner of Endowments in his report, Ext. K. The Defendant accordingly pleaded that the Plaintiff is not a fit person to succeed the Mahantship of the Math. With the above pleadings the Defendant made a counter claim to the Mahantship of the Math.

4. Several issues were framed and the parties adduced oral and documentary evidence. On consideration of those evidence Learned Trial Court held that there was a valid nomination and testamentary disposition in favour of the Plaintiff by the last reigning Mahanta late Goura Govinda Das Goswami and that at no point of time the nomination was either expressly or impliedly revoked. Learned Trial Court, however, decided the issue nos. 3 & 6 against the Plaintiff by holding that the Plaintiff is the Chella of Mahanta Biswambar Das Goswami and that he has acted beyond the norms of moral ethics of an ascetic. On these findings Learned Trial Court decreed the suit, declared the Plaintiff as a hereditary trustee Mahanta of the Math and dismissed the counter claim of the Defendant. The Defendant carried appeal but the Learned Appellate Court also concurred with the findings of the Learned Trial Court on all the issues except the issue No. 3. So far as issue No. 3 is concerned, Learned first Appellate Court held that the Plaintiff was no doubt initially a Chella of Biswambar Dos Goswami, but he was later on inducted as Sadhak Sisya (practicing disciple) of late Goura Govinda Dos Goswami. Accordingly, the appeal was dismissed. Not being satisfied with the concurrent findings of the Courts below, the Defendant-Appellant has filed the present appeal.

5. The following substantial questions of law have been formulated for consideration in this appeal:

I. Whether the mere acknowledgement of receipt of the alleged nomination by the Commissioner on 6.1.1976 (Ext. 14) amounts to recognition of the nominee as Mahanta within the meaning of Section 39 of the O.H.R.E. Act or the Commissioner can enquire into its genuineness without blindly recognizing as a matter of course?

II. Whether the Civil Court is mechanically to endorse a nomination or adjudicate u/s 9 of C.P.C. , whether the nominee is a fit person, particularly in view of the concurrent findings that the Plaintiff -Respondent bears immoral conduct?

III. Whether the Learned lower Appellate Court was correct in ignoring the admission that the Plaintiff was the Chella of Mahanta-Biswambar Das from consideration and in not non-suiting the Plaintiff-Respondent on this count?

6. Provision relating to appointment-of successors by hereditary trustees is contemplated u/s 39 of the Act. The said Section reads as follows:

5.39. Appointment of Successors by hereditary trustees-

When the hereditary trustee of a math nominates his successor he shall give intimation in writing to (the Commissioner). Subsequent changes in the nomination may also be intimated within three months of the nomination. For purpose of succession the last nominee so intimated shall be recognized by (the Commissioner). If no appointment is made during life time of the trustee, (the Commissioner) shall have full power to appoint an Executive Officer and the trust shall be brought under the direct control of (the Commissioner) and shall be treated as an institution under Chapter VII. In making this appointment (the Commissioner) shall have due regard to the custom and usage and tenets of the math. Any person aggrieved by the decision may within ninety days from the date of the decision institute a suit in a competent Court of law to establish his right to the office of the hereditary trustee but pending the result of such suit, if any, the order of (the Commissioner) shall be final.

The Section, therefore, clearly contemplates that the Commissioner is bound to accept the nomination validly made by the hereditary trustee. The only aspect into which the Commissioner can make enquiry is about the genuineness of the nomination. This aspect was clarified by this Court in the case of *Gouranga Charan Das v. Adhikari Baishnab Das and Anr.* 1972 (I) C.W.R., 860 with the following observations:

When the hereditary trustee of the Math nominates a successor, he is required to give intimation in writing to the Commissioner. Subsequent changes in the nomination may also be intimated within three months from the nomination and for the purpose of succession the last nominee so intimated has to be recognized by the Commissioner. The Commissioner has no jurisdiction to decide whether a person initiated as Chela at one point of time can be dislodged from such position.

In the case of [Krushna Chandra Vs. Commr. of Endowments and Others](#), this Court while reiterating the ratio of *Gouranga Charan Das* (supra) clarified the matter further with the following words in paragraph 25 of the judgment.

Section 39 is not retrospective in operation. The pre-condition for exercise of power under second part of Section 39 is when no valid appointment has been made by the last Mahant during his life time. The expression "if no appointment is made during the life time of the trustee" is not to be equated to nomination plus intimation as indicated in the first part of Section 39, but must mean a condition where no nomination has been made at all or is deemed not to have been made. A Chela who has been validly nominated is not intended to lose his right to the office or his right to move the Commissioner u/s 36 and failing there to establish it in a civil Court by suit merely because the last Mahant failed to intimate such nomination by writing, but that will be the exact result if the word "appointment" is held to mean nomination followed by intimation in writing. Right to office of the trustee is

created by nomination and not by intimation and when the intendment of the second part of Section 39 is to empower the Commissioner to bring such institution under his direct control where there are no available claimants to succession in the field, the expression "appointment" can only mean a valid nomination whether intimated or not. 1970 (1) CWR 457 (para- 25)

7. A close reading of the above noted cases would show that the reigning Mahant has to make a nomination of his successor and give intimation of such nomination to the Commissioner and on being satisfied about the genuineness of the nomination, the Commissioner has to accept such nomination and recognize the nominee. In order to satisfy himself about the genuineness of the nomination the Commissioner has been given the jurisdiction to make enquiry. According to the Learned Counsel for the Appellant, the enquiry contemplated u/s 39 of the Act includes the determination of the worthiness of the person nominated to occupy the Gaddi of Mahant. In support of his view Learned Counsel cited the case of Mahant Basudev Dos v. The Commissioner of Hindu Religious Endowments, Orissa 1970 (1) CWR 457. The observation made in paragraph 8 of the said judgment however dispels the view of the Learned Counsel for the Appellant. The said Para reads as follows:

An intimation of nomination of his successor in writing given by the hereditary trustee to the Commissioner shall be recognized by the Commissioner provided he is satisfied that the intimation is genuine. The Commissioner accordingly gets jurisdiction to make an enquiry into the genuineness of the intimation. If the intimation is given during the life time of the hereditary trustee it is easy for the Commissioner to verify the authenticity of the nomination from the Mahant. If the nomination in writing is intimated to the Commissioner after the death of the hereditary trustee or at a time when the hereditary trustee is not in a position to give evidence the Commissioner would take independent evidence to find out the genuineness of the intimation.

8. The above observation clearly says that u/s 39 of the Act the Commissioner gets jurisdiction to make an enquiry into genuineness of intimation only and in doing so he may verify the authenticity of the "nomination from the Mahant himself and in case the Mahant is dead or is not available then by taking independent evidence, but no where in the judgment there is any indication that the commissioner has the power to enquire into the worthiness of the nominee to occupy the "Gaddi" of the Math.

9. In the present case admittedly there was a nomination in favour of the Plaintiff-Respondent and to ascertain the genuineness of such nomination the Commissioner asked the reigning Mahant Gour Govinda Das Goswami to support the nomination by a Will and accordingly reigning Mahant executed the Will, Ext-3 in favour of the Plaintiff-Respondent and forwarded a copy of the said Will to the Commissioner which was duly received and acknowledged by the Commissioner.

The Testator Gour Govinda Dos Goswami lived for 11 years after execution of the Will and he never revoked the Will and recalled the nomination at any time. In such situation, the acceptance of the nomination in favour of the Plaintiff-Respondent by the Commissioner cannot be said to be illegal or against the provision of Section 39 of the Act.

10. Learned Counsel for the Respondent relying on the concurrent findings of the Courts below on issue No. 6 about the conduct of the Plaintiff-Respondent argued that the Commissioner should have refused to accept the nomination of the Plaintiff- Respondent as Mahant, as Mahant of a religious institution should possess a moral character and a person having record of illicit sexual affairs and misappropriation of funds of the Math should not be allowed to become Mahant. In support of his contention he relied on the case of [The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.](#), wherein their lordships while discussing about the rights and duties of Mahant of Math made the following observations:

...A Mahant's duty is not simply to manage the temporalities of a Math. He is the head and superior of spiritual fraternity and the purpose of Math is to encourage and foster spiritual training by maintenance of a competent line of teachers who could impart religious instructions to the disciples and followers of the Math and try to strengthen the doctrines of the particular school or order, of which they profess to be adherents....

11. There is no scope for any doubt that Mahant of a Math being the religious head of a particular Institution should not only have the faith in the cult or school to which the Math belongs, but should be an able teacher to impart religious instructions to the disciples and followers and should have also an exemplary character. Keeping this in mind Section 35 of the Act has been inducted which defines disqualification of the- hereditary trustee and empowers the Commissioner to conduct inquiry and declare by an order in writing whether a trustee is disqualified either temporarily or permanently. As has been indicated by Learned Courts below there is no bar for initiating proceeding u/s 35 of the Act against the Plaintiff-Respondent for the alleged misconduct, but so long as such proceeding has not been undertaken and the Plaintiff-Respondent has not been declared disqualified, he is to continue as Mahant of a Math because there is a valid nomination u/s 39, of the Act in his favour. The submission of Learned Counsel for the Appellant that the Commissioner should have refused to accept the nomination made in favour of the Plaintiff-Respondent at the stage of inquiry u/s 39 is not acceptable because Section 39 does not confer any power on the Commissioner to enquire about the qualification or disqualification of the person nominated at the time of acknowledging the nomination.

12. In the above noted legal backdrop, while considering the genuineness of nomination u/s 39 of the Act the Civil Court cannot declare a person disqualified on

the ground of immoral conduct for the simple reason that Section 35 of the Act contemplates inquiry about the disqualification, passing order of disqualification and appeal against the order of the Commissioner in that regard.

13. There are some documents such as voter list, Ext. M, affidavit of the Plaintiff in O.J.C. No. 1381 of 1985, Ext-J where the Plaintiff has described himself as Chella of late Biswambar Das and the Plaintiff has also admitted that in these documents he described himself as Chella of late Biswambar Das, but the evidence of record shows that later on in 1957 the Plaintiff was inducted as practicing disciple of late Gaura Govind Das Goswami. Learned 1st Appellate Court discussed all the admissions of the Plaintiff along with rest evidence and recorded his finding on issue No. 3. So there is hardly any scope to say that the admissions of the Plaintiff were ignored by the 1st Appellate Court.

14. For all the aforesaid reasons, all the questions of law raised in this appeal are answer against the Appellant. Consequently, the appeal is found to be without any merit and is dismissed on contest, but in the peculiar circumstances without any cost.