

IN THE COURT OF THE COMMISSIONER OF ENDOWMENTS,
ODISHA, BHUBANESWAR.

Present: - **Sri C. R. Mohapatra, O.S.J.S.(S.B.),**
Commissioner of Endowments,
Odisha, Bhubaneswar.

O.A.No.19 of 2007 U/S.25 of O.H.R.E .Act.

Sri Sidheswar Mohadeb bije at Sidheswar Sahi,
PO- Tulsipur, PS-Lalbag, Dist. Cuttack
represented through
Prafulla Kumar Panda, Hereditary Trustee, aged about 48 years,
S/o Late Gourahari Panda,
At-Mansinghpatna, PO-Tulsipur, PS-Lalbag, Dist.Cuttack

....Petitioner.

-Versus-

Smt. Puspalata Biswal, aged about 60 years
W/o Dibakar Biswal,
At-Shri Vihar Colony, PO-Tulsipur, PS- Bidanasi,Dist. Cuttack.
... Opp. Party

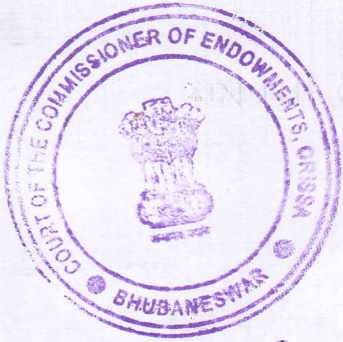
Advocate for the Petitioner: Mr. R.K.Routray

Date of Argument: 15.11.2019

Date of Judgment: 29.11.2019

J U D G M E N T

1. The present original application is being filed U/S.25 of the Orissa Hindu Religious Endowment Act seeking relief of recovery of immovable trust property of religious institution Sri Sidheswar Mohadeb bije at Sidheswar Sahi, PO-Tulasipur, District-Cuttack.
2. The background facts leading to the filing of the present case is that the Petitioner Sri Prafulla Kumar Panda is one of the Hereditary Trustee of the religious institution. The deity is having its endowed property but the O.P having no manner of right title and



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interest over the case land is un-authorized possessing the same. She is not vacating the said land despite demand of the Petitioner for vacation of the case land. She is possessing the land basing upon a Sale Deed No.3090 dt. 5.7.93. The O.P has appeared but failed to contest the case from 17.10.2011. As per Sec.25 read with O.H.R.E. Act, 1951 and Rule 43 of the O.H.R.E. Rule, 1959 the procedure to be adopted for trial of a case U/s 25 of the OHRE Act is a summery one as envisaged U/O 37 CPC. In this case, since the O.P has failed to contest the case after appearance by seeking leave to defend, a judgment is to be pronounced U/O 37 Rule-6(a).

3. Basing on the premise of the pleading of the Petitioner the following points emerge for adjudication.

- (i) Is the case maintainable?
- (ii) Is the Petitioner entitled to the relief of delivery of possession of the case land in possession of O.P?

4. The order passed U/S 25 of the OHRE Act is not appealable (Section 44 of the OHRE Act). Section 25 of the OHRE Act envisages the procedure of summery enquiry before passing of order of eviction and recovery of property of the deity. Rule 43 of the OHRE Rule 1959 describes that summery nature enquiry shall be conducted as in respect of suit of small cause nature with due notice to the persons affected by the enquiry. Order 37 provides the procedure for trial of suits by the court of small causes. Order 37 Rule 2(3) provides that when the defendant defaults in his appearance, the allegation in the plaint shall be deemed to be admitted and the Plaintiff shall be entitled to the decree which may be executed forthwith. Further, order-37 Rule -3(6)(a) provides that when the defendant fails to apply for leave to defend the plaintiff shall entitled to the judgment forthwith.



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5. The Petitioner examined himself in furtherance of his case. He has also produced and proved ROR of the case land (Ext.1). He has also filed the Xerox copy of order passed in O.A.No.105 of 1996 U/S 30 of the OHRE Act.

6. With regard to the claim of the Petitioner, it is in his evidence (P.W.1) that he is one of the hereditary trustee of the public religious institution Lord Sidheswar Mohadev, Tulasipur, Cuttack. It appears from the Xerox copy of order passed by the Commissioner of Endowments, Odisha, Bhubaneswar in O.A.No.105 of 1996 U/S 30 of the OHRE Act (X) that the Petitioner has been declared as a hereditary trustee in respect of the case institution. So, the Petitioner has the right to file the present case for recovery of immovable property. On a view of the R.O.R it appears that the ROR in respect of the case land has been recorded in the name of Lord Sidheswar Mohadev marfat-the O.P Puspalata Biswal. It is settled position of law that entries made in the ROR are for revenue purpose. It denotes the name of person from whom the revenue is to be collected. It neither creates nor extinguishes the legal right of any person. The Petitioner being the hereditary trustee of the religious institution the lawful caretaker of the property of the deity. It is not understandable as to how the name of the OP was recorded as marfatdar who is not a trustee at all. It is the mandate of law U/S 19 of the Act that the property of a public religious institution cannot be transferred without a sanction being accorded by the Commissioner of Endowments, Odisha. Any transfer of land of the deity without sanction of the Commissioner of Endowments is invalid and inoperative. There is not material evidence that the OP has lawfully acquired the property of the case land belongs to the deity. In this case the O.P has abandoned the case in the midst of trial for the reason best known to her. In the above stated of facts it can be safely held that she is in un-



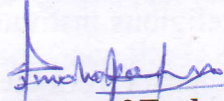
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authorized possession of the case land which needs to be recovered.
The case is maintainable. Hence ordered.

ORDER

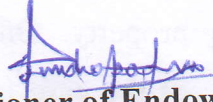
The application U/S 25 is hereby allowed. Let the requisition be issued to the Collector, Cuttack for recovery of the case land and deliver possession to the Petitioner within six month of receipt of the order.




Commissioner of Endowments,
Odisha, Bhubaneswar.

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The Judgment is typed to my dictation and corrected by me and pronounced in the open court on this the 29th day of November 2019 under my signature and seal of this court.


Commissioner of Endowments,
Odisha, Bhubaneswar

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Schedule of land.

Tahasil-Cuttack Sadar. Mouza-Dakhin Tulasipur, Unit No.8,
Khata No.309/67, Plot No.462/918 area Ac.0.040decs.
out of total Ac.0.040dec. Bounded by
North- Prafulla Ku. Panda
South-Late Abani Ku. Saha.
East- Common passage.
West-Late Harekrushna Panda & others.

List of witnesses examined on behalf of Petitioner

P.W.1: Prafulla Ku. Panda

List of witnesses examined on behalf of O.P

None

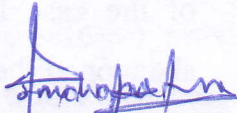
List of documents exhibited on behalf of Petitioner

Ext.1: ROR of the case land.

Mark-X: Xerox copy of order passed in OA.No.105 of 1996 U/S 30 of
OHRE Act.

List of documents exhibited on behalf of O.P

Nil


Commissioner of Endowments,
Odisha, Bhubaneswar.

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