



**A.F.R.**

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**R.S.A. No.393 of 2024**

(In the matter of an appeal under Section 100 of the Code of Civil Procedure, 1908)

*Ankura Charana Sahoo* .... *Appellant*

*-versus-*

*Sarat Chandra Majhi and others* .... *Respondents*

Appeared in this case:-

*For Appellant* : Mr. S.K. Nayak, Advocate

*For Respondents* : Mr. A. Moharana, Advocate

Appeared in this case:-

**CORAM:  
JUSTICE A.C. BEHERA**

**JUDGMENT**

**Date of hearing : 21.01.2026 / date of judgment : 20.02.2026**

*A.C. Behera, J.* This 2<sup>nd</sup> appeal has been preferred against the reversing judgment.

2. The appellant in this 2<sup>nd</sup> appeal was the sole plaintiff before the learned trial court in the suit vide C.S. No.259 of 2014-I and respondent no.1 before the learned 1<sup>st</sup> appellate court in the 1<sup>st</sup> appeal vide R.F.A. No.30 of 2019.



3. The respondents in this 2<sup>nd</sup> appeal were the defendants before the learned trial court in the suit vide C.S. No.259 of 2014-I and the appellant along with respondent nos.2 and 3 before the learned 1<sup>st</sup> appellate court in the 1<sup>st</sup> appeal vide R.F.A. No.30 of 2019.

The suit of the plaintiff(appellant in this 2<sup>nd</sup> appeal) against the defendants(respondents in this 2<sup>nd</sup> appeal) vide C.S. No.259 of 2014-I was a suit for declaration and permanent injunction.

4. The suit properties are M.S. Khata No.288, Plot No.437 A.1.47 decimals and M.S. Plot No.430 A.0.40 decimals in Mouza-Anandapur under Dhamnagar Tahasil in the district of Bhadrak, which corresponds to C.S. Khata No.469, Plot No.454 A.1.48 decimals and C.S. Plot No.465 Plot No.457 A.0.034 decimals, which corresponds to mutated Khata No.384/230.

As per the case of the plaintiff, the suit properties, i.e., C.S. Khata No.469 Plot No.454 and C.S. Khata No.465 C.S. Plot No.457 were recorded originally in the Sabik Settlement in the name of the deities, i.e., Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandpur Marfat Mahendra Nath Dutta, S/o-Jagannath Dutta.

The deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandpur were the family deities of Shri Mahendra Nath



Dutta. The Marfatdar of the suit properties, i.e., Mahendra Nath Dutta sold the suit properties to the father of the plaintiff, i.e., Bhikari Charan Sahoo through RSD No.5172 dated 25.08.1967(Ext.5) indicating his status therein as Sebayata of the deities for the maintenance of the temple of the deities and delivered possession thereof to the father of the plaintiff. Accordingly, since the date of above purchase, i.e., since 25.08.1967, the father of the plaintiff possessed the suit properties being the exclusive owner thereof and paid the rents for the same to the Government through valid rent receipts.

As such, the father of the plaintiff, i.e., Bhikari Charan Sahoo was the owner and in possession over the entire suit properties, in which, the defendants have no right, title, interest and possession. The father of the plaintiff died leaving behind the plaintiff as his sole successor. For which, the suit properties left by the father of the plaintiff, devolved upon the plaintiff. Therefore, he(plaintiff) is the exclusive owner and in possession over the suit properties like his father, in which, the defendants have no right, title, interest and possession.

During the Major Settlement Operation, the father of the plaintiff was very old and he(plaintiff) was working at Kolkata for earning livelihood for his family. For which, the plaintiff could not take proper steps during Major Settlement Operation for recording the suit properties



in the name of his father. Therefore, the suit properties were erroneously recorded in the name of the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandapur Marfatdar Mahendra Nath Dutta son of Jagannath Dutta like the Sabik RoR reflecting the note of forcible possession of the father of the plaintiff, i.e., Bhikari Charan Sahoo in its remarks column.

The defendant nos.2, 3 and 4 are the members of one family. They(defendant nos.2, 3 and 4) are projecting them as the successors of Mahendra Nath Dutta. The defendant nos.2, 3 and 4 have not resided at any point of time in the suit village Anandapur. They(defendant nos.2, 3 and 4) are the permanent residents of Cuttack.

The defendant no.1(Sarat Majhi) is a rich, influential as well as a shrewd and clever person in village Anandapur. The said defendant no.1(Sarat Majhi) established a Girls' High School in village Anandapur namely as Sukadevi Balika Ucha Vidyalaya, Anandapur. In order to arrange properties for the grant-in-aid of the said Sukadevi Balika Ucha Vidyalaya, Anandapur, the defendant no.1(Sarat Majhi) managed to execute a gift deed vide registered Gift Deed No.10281300309 dated 25.03.2013(Ext.8) in respect of the suit properties in favour of Sukadevi Balika Ucha Vidyalaya, Anandapur illegally from the defendant nos.2, 3 and 4 without obtaining the required permission under law from the



Commissioner of Endowment, though in fact, the defendant nos.2, 3 and 4 had no right, title, interest and possession over the suit properties. Because, the plaintiff is the owner and in possession over the suit properties. Therefore, the said so-called Gift Deed No.10281300309 dated 25.03.2013(Ext.8), which was executed by the defendant nos.2, 3 and 4 in favour of Sukadevi Balika Ucha Vidyalaya in respect of the suit properties is illegal, void and non-est in the eye of law. On the basis of the above illegal gift deed dated 25.03.2013 vide Ext.8, the defendant no.1 managed to record the suit properties illegally in the name of Sukadevi Balika Ucha Vidyalaya, Anandapur as per the order passed in a mutation case behind the back of the plaintiff and after mutation, a separate RoR vide Khata No.384/230 has been prepared illegally in respect of the suit properties in the name of Sukadevi Balika Ucha Vidyalaya, Anandapur. So, the RoR of the suit properties after mutation vide Khata No.384/230 in the name of Sukadevi Balika Ucha Vidyalaya is illegal and non-est in the eye of law.

5. When, the defendant no.1 claimed his possession over the suit properties on the basis of the aforesaid illegal gift deed dated 25.03.2013 as well as illegal RoR vide Khata No.384/230 and tried to dispossess the plaintiff from the suit properties, then, without getting any way, the plaintiff approached the civil court by filing the suit vide C.S. No.259 of



2014-I against the defendants praying for declaration of his title over the suit properties and also to declare the registered gift deed No.10281300309 dated 25.03.2013(Ext.8) said to have been executed by the defendant nos.2, 3 and 4 in favour of the Sukadevi Balika Ucha Vidyalaya, Anandapur in respect of the suit properties as well as the RoR thereof after mutation vide Khata No.384/230 as illegal, to injunct the defendant no.1 permanently from creating any sort of disturbances in his possession over the suit properties and to pass such other relief(s) in his favour, to which, he(plaintiff) is entitled for as per law and equity.

6. Although, none of the defendants filed any written statement in the suit, still then, for the just decision of the suit, the leaned trial court framed four numbers of issues in the suit vide C.S. No.259 of 2014-I and the said issues are:-

### **ISSUES**

- i. Whether there is cause of action for the suit?
- ii. Whether the suit land needs to be declared in the name of the plaintiff?
- iii. Whether the Gift Deed bearing No.10281300309 dated 25.03.2013 is null and void?
- iv. To what relief the plaintiff is entitled to?

7. In order to get the aforesaid reliefs sought for by the plaintiff against the defendants, he (plaintiff) examined two witnesses from his



side including him as P.W.1 and relied upon the documents vide Exts.1 to 10.

Though, none of the defendants including the defendant no.1 had filed their written statements, but, the defendant no.1(Sarat Majhi) participated in the hearing of the suit and cross-examined the witnesses of the plaintiff including the plaintiff.

8. After conclusion of hearing and on perusal of the materials, documents and evidence available in the record, the learned trial court answered all the issues in favour of the plaintiff and against the defendants and basing upon the findings and observations made by the learned trial court in the issues in favour of the plaintiff and against the defendants, the learned trial court decreed the suit of the plaintiff vide C.S. No.259 of 2014-I on contest against the defendant no.1 and ex parte against other defendants and declared the right, title and interest of the plaintiff over the suit properties and injucted the defendants permanently from entering into the suit properties as per its judgment and decree dated 19.01.2019 and 02.02.2019 respectively assigning the reasons that,

*“Mahendra Nath Dutta being the exclusive owner of the suit properties, he has transferred the same to the father of the plaintiff, i.e., Bhikari Charan Sahoo through registered Sale Deed No.51723 dated 25.08.1967(Ext.5) for a consideration amount of Rs.500/- and delivered*



*possession thereof and the father of the plaintiff, i.e., Bhikari Charan Sahoo and Bhikari Charan Sahoo was in possession over the suit properties on payment of rents to the Government. For which, the subsequent Gift Deed No.10281300309 dated 25.03.2013(Ext.8) said to have been executed by the defendant nos.2, 3 and 4 in respect of the suit properties in favour of Sukadevi Balika Ucha Vidyalaya, Anandapur as well as the RoR thereof as per order passed in the mutation case on the basis of the above gift deed dated 25.03.2013 vide Ext.8 are held as illegal and void. When, the plaintiff has been possessing the suit properties since the time of his father, then, the plaintiff is entitled for the declaration of his right, title and interest over the suit properties in his favour and he(plaintiff) is also entitled to get the decree for permanent injunction against the defendants in order to restrain them(defendants) permanently from entering into the suit properties.”*

9. On being dissatisfied with the aforesaid judgment and decree dated 19.01.2019 and 02.02.2019 respectively passed in C.S. No.259 of 2014-I by the learned trial court in favour of the plaintiff and against the defendant, the defendant no.1 challenged the same preferring the 1<sup>st</sup> appeal vide R.F.A. No.30 of 2019 being the appellant against the plaintiff arraying him(plaintiff) as respondent no.1 and also arraying the other defendants as proforma respondents.



10. After hearing from both the sides, the learned 1<sup>st</sup> appellate court allowed that 1<sup>st</sup> appeal vide R.F.A. No.30 of 2019 of the defendant no.1(appellant) and set aside the judgment and decree passed by the learned trial court and dismissed to the suit of the plaintiff vide C.S. No.259 of 2014-I as per its judgment and decree dated 09.08.2024 and 23.08.2024 respectively assigning the reasons that,

*“when the Sabik and Hal RoR of the suit properties were published in the name of the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura and when, the said deities have not been impleaded as parties in the suit vide C.S. No.259 of 2014-I filed by the plaintiff and when, as per law, the marfatdar of the deity has no right to alienate the properties of the deities in his individual capacity without taking permission from the Endowment Commissioner as per Hindu Religious Endowment Act, 1951 and when, the gift deed dated 25.03.2013 vide Ext.8 in respect of the suit properties has been executed by the defendant nos.2, 3 and 4 in favour of Sukadevi Balika Ucha Vidyalaya, Anandapur and the present RoR of the suit properties after mutation is in the name of Sukadevi Ucha Balika Vidyalaya and when, Syukadevi Ucha Balika Vidyalaya has not been arrayed as a party in the suit, then at this juncture, the suit of the plaintiff for declaration of title is not entertainable under law in absence of the necessary parties thereof,*



*i.e., deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura as well as Sukadevi Balika Ucha Vidyalaya, Anandapur. That apart, both the deities are the public deities. Because, the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije are the village deities of Anandpur. For which, in absence of the above deities and Sukadevi Balika Ucha Vidyalaya, Anandapur, the suit of the plaintiff for declaration is not adjudicable under law. Therefore, the impugned judgment and decree passed by the learned trial court in the suit vide C.S. No.259 of 2014-I is set aside.”*

11. On being aggrieved with the aforesaid judgment and decree dated 09.08.2024 and 23.08.2024 respectively passed by the learned 1<sup>st</sup> appellate court in R.F.A. No.30 of 2019, in dismissing the suit of the plaintiff vide C.S. No.259 of 2014-I, he(plaintiff) challenged the same preferring this 2<sup>nd</sup> appeal being the appellant against the defendants arraying them(defendants) as respondents.

12. This 2<sup>nd</sup> appeal was admitted on formulation of the following substantial questions of law, i.e.:-

(i) Whether the learned 1<sup>st</sup> appellate court is justified in dismissing the suit on the ground that, Sukadevi Balika Vidyalaya has not been arrayed as party to the suit, when, the suit schedule land was gifted and in favour of the school Marfat-Secretary, namely,



Sarat Chandra Majhi, who is impleaded as a defendant no.1 in the suit?

(ii) Whether the learned lower appellate court is justified in dismissing the suit on the ground that no permission under Section 19 of the Orissa Hindu Religious Endowment Act was obtained for alienation of suit properties, when neither of the parties are claiming the deities as public deities, rather the deities are family deities?

13. I have already heard from the learned counsel for the appellant and learned counsel for the respondents.

14. In order to assail the impugned judgment and decree passed by the learned 1<sup>st</sup> appellate court, the learned counsel for the appellant (plaintiff) relied upon the following decisions:-

(i) In a case between *Thangam and another vrs. Navamani Ammal* : reported in **2024(I) OLR (SC)-904**

(ii) In a case between *Tamala Das vrs. State of Odisha and others* : reported in **2023(II) CLR-310**

(iii) In a case between *Naba Kishore Panda vrs. Bulendra @ Bulla Das and others* : reported in **18(1974) CLT-1152**

(iv) In a case between *Kuldeep Kumar Dubey and others vrs. Ramesh Chandra Goyal(D) th Lrs.* : reported in **2015(I) CLR(SC)-467**

On the contrary, in support of the impugned judgment and decree passed by the learned 1<sup>st</sup> appellate court, the learned senior counsel for



the Respondent No.1(defendant no.1) relied upon the following decisions:-

(i) In a case between *Jogendra Nath Naskar vrs. Commissioner of Income-Tax, Calcutta* : reported in *AIR 1969(SC)-1089* and In a case between *Ram Janki Ji and others vrs. State* : reported in *AIR 1992(Patna)-135*

(ii) In a case between *Sri Nrusingha Charan Sahoo and others vrs. State of Odisha and another* : reported in *2016(II) OLR-850*

(iii) In a case between *State of Orissa and another vrs. Sukuru Polai and others* : reported in *2018(I) CLR-572*

(iv) In a case between *Ch. Subrat Singh (Dead) and others vrs. Manohar Lal and others* : reported in *AIR 1971(SC)-240*

(v) In a case between *Shaikh Saffiquiddin vrs. Gulei alias Gopal Samal and nine others* : reported in *2009(I) CLR-64*

(vi) In a case between *Udit Narain Singh Malpaharaia cvrs. Addl. Member, Board of Revenue, Bihar* : reported in *AIR 1963(SC)-786*

(vii) In a case between *Executive Officer, Sri Baldev Jew Bije, Keinjhar vrs. Orissa Hindu Religious Endowment Act* : reported in *2005(II) CLR-729*

(viii) In a case between *Sri Mangala Thakurani Bije, Kakatpur and others vrs. State of Orissa and others* : reported in *2010(II) CLR-1139*

(ix) In a case between *Sri Brajabandhu Pati vrs. Collector-cum-Trustee, Debutter, Dhenkanal and others* : reported in *2010(I) CLR-27*

(x) In a case between *Collector, Koraput vrs. Sunadhar Pujari and others* : reported in *2025(I) OLR-384*

15. When, both the aforesaid formulated substantial questions of law are interlinked according to the findings and observations made by the learned trial court and the leaned 1<sup>st</sup> appellate court, then, both the aforesaid formulated substantial questions are taken up together analogously for their discussions hereunder:-



16. The plaintiff(P.W.1) has specifically deposed in his depositions answering to the questions of the learned counsel for the defendant no.1 during the trial of the suit that,

“In both C.S. and M.S. Settlement, the suit properties were recorded in the names of the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandapur. His father Bhikari Charan Sahoo had not obtained any permission from Endowment Commissioner to purchase the suit properties. Mahendra Nath Dutta had executed the sale deed in respect of the suit properties on dated 25.08.1967(Ext.5) in favour of his father Bhikari Charan Sahoo as the Marfatdar of Shri Rasika Ray Thakura. The sale deed dated 25.08.1967 in favour of his father does not reveal the name of the deity Shri Laxmijanardan Thakura. Both in C.S. and M.S. RoRs the suit properties were recorded in the names of Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandpur.”

17. In the C.S. and M.S. RoRs, the suit properties were recorded in the names Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije Nijgan.

In a case between *Niranjan Barik vrs. Sri Jambeswar Mahadev, Bije, Jamara, Kendrapara and others* decided on 26.08.2025 in W.P.(C) No.3020 of 2024 : reported in 2026(I) CLR-23 at Para No.14, it has been



clarified that, when the RoR of the suit properties is prepared in the name of any deity reflecting/indicating that, the 'Bijesthali' of the said deity is Nijgan, the said reflections prima facie clarify, unless contrary is proved that, the deity in whose name the RoR stands is the village deity, but, not a private deity. The said deity is worshiped by all the villagers of that village, but, not by any individual family members. Because, the 'Bijesthali' of the deity is in that village, but, not in the house of anybody."

18. So, taking the reflection to the 'Bijesthali' of the deity in the C.S. and Hal RoR of the suit properties into account, it is held that, Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura are the village deities of village Anandapur under Dhamnagar Tahasil, but, the said duties were/are not the private family deities of the Marfatdar Mahendra Nath Dutta.

When, the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandapur are the public deities being the deities of village Anandapur and the Marfatdar of the said deities, i.e., Mahendra Nath Dutta was representing the deities as Marfatdar on behalf of the villagers of Anandapur and when, as per law, Mahendra Nath Dutta had no alienable right in the suit properties, as the suit properties belong to the deities Shri Rasika Ray Thakura and Shri Laxmijanardan



Thakura and when, the suit properties were not the properties of Marfatdar Mahendra Nath Dutta, then at this juncture, in order to ascertain the power and jurisdiction of the Marfatdar of the deities like Mahendra Nath Dutta to deal with the suit properties, I thought it proper to place it on record to the following decisions on this aspect.

On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between *Sri Mangala Thakurani Bije, Kakatpur and others vrs. State of Orissa and others* : reported in *110(2010) CLT-574* that,

Deity is to be represented through some human agencies. The land belongs to the deity, but, the same not belong to the Marfatdar or Marfatdars.

(ii) In a case between *Temple of Thakurji Village Kansar vrs. State of Rajasthan and others* : reported in *AIR 1998(Rajasthan)-85* that,

Lands belong to the deity cannot be subject to alienation in violation of statutory requirement.

(iii) In a case between *Biswanath Choudhury and others vrs. Shyam Sundar Choudhury and after him Narayan Chowdhury and others* : reported in *1993(I) OLR-249 (Para-11)* that,

A Sebait or Marfatdar is a trustee of the religious institution, the properties belonging to the institution vests in the deity, who is a juristic person and not on the Marfatdar or Sebait.

(iv) In a case between *Sarata Chandra Mohanty and another vrs. Administrator of Jagannath Temple, Puri* : reported in *42(1976) CLT-1241* that,

The deity being an inanimate person capable of holding property, has to act in all matters only through its Marfatdars.

The word “Marfatdar” is applied to those, who look-after the management and routine duties in connection with the endowment. The marfatdars, therefore, cannot take up the position that, the said



properties are their own properties. So, Marfatdars are neither the owners nor in actual possession over the properties of the deity. For which, they have no alienable right in the properties of the deity.

19. As per the pleadings and evidence of the plaintiff, it is his own case that, the suit and properties were the properties of the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandapur under Dhamnagar Tahasil. Sabik and Hal RoR of the suit properties vide Exts.1, 2 and 3 were prepared in the name of the above deities indicating the name of Mahendra Nath Dutta as Marfatdar.

The plaintiff(appellant in this 2<sup>nd</sup> appeal) has claimed his title and possession over the suit properties on the basis of the sale deed No.5172 dated 25.08.1967(Ext.5) stating in his pleadings that, his father had purchased the same from the deities through its Marfatdar Mahendra Nath Dutta and he(plaintiff) has prayed for declaration that, the Gift Deed No.10281300309 dated 25.03.2013(Ext.8) said to have been executed by the defendant nos.2, 3 and 4 in favour of Sukadevi Balika Ucha Vidyalaya, Anandapur as void.

20. It is curious enough that, in the aforesaid Sale Deed No.5172 dated 25.08.1967(Ext.5), the name of the deity, i.e., Shri Laxmijanardan Thakura has not been uttered or indicated. As such, the own document vide Ext.5 through which, the plaintiff is claiming title on the suit properties does not contain the name of one joint owner of the suit



properties, i.e., deity Shri Laxmijanardan Thakura. For which, the claim of the plaintiff is that, his father has purchased the suit properties from the recorded deities has been failed to be established.

21. As per the discussions and observations made above, when, it is held that, Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura are the village deities of village Anandapur and they are the are public deities, then at this juncture, without permission of the Endowment Commissioner as per Section 19 of the Hindu Religious Endowment Act, 1951, the Marfatdar of the said deities, i.e., Mahendra Nath Dutta had no right to alienate the suit property through the Sale Deed No.5172 dated 25.08.1967(Ext.5) in favour of the father of the plaintiff.

On this aspect, the propositions of law has already been clarified in the ratio of the following decisions:-

(i) In a case between *Temple of Thakurji Village Kansar vrs. State of Rajasthan* : reported in *AIR 1998(Rajasthan)-85* that,

The lands belonging to the deity cannot be subjected to alienation in violation of statutory requirement.

(ii) In a case between *Smt. Basanti Kumari Sahu vrs. State of Orissa and others* : reported in *81(1996) CLT-571(F.B.)* that,

The provisions of law envisaged under Section 19 of Orissa Hindu Religious Endowment Act, 1951 are mandatory in nature. Any alienation made in contravention of the said provision is void.

22. So, in view of the propositions of law enunciated in the ratio of the aforesaid decisions, when one of the co-owners of the suit properties, i.e.,



deity Shri Laxmijanardan Thakura is a complete stranger to the sale deed vide Ext.5 and when, the said sale deed vide Ext.5 has been executed without obtaining permission from the Endowment Commissioner as per Section 19 of the Orissa Hindu Religious Endowment Act, 1951, for the alienation of the same, then at this juncture, the said Sale Deed No.5172 dated 25.08.1967 vide Ext.5 relied by the plaintiff in respect of the suit properties in favour of his father cannot be held as a valid sale deed and on the basis of that sale deed vide Ext.5, the plaintiff is not entitled under law to get declaration of title over the suit properties in his favour.

23. When, it is own case of the plaintiff that, the suit properties were properties of the deities Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandapur and when, the Sabik and Hal RoR of the suit properties were in the name of the said deities and when the Gift Deed No.10281300309 dated 25.03.2013 vide Ext.8 has been executed by the defendant nos.2, 3 and 4 in favour of Sukadevi Balika Ucha Vidyalaya, Anandapur and when the plaintiff has prayed for a declaration to the gift deed(Ext.8) and the RoR of the suit properties in the name of Sukadevi Balika Ucha Vidyalaya, Anandapur after mutation vide Khata No.384/230 as illegal and void, then, the deities, i.e., Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura Bije, Anandapur as well as Sukadevi Balika Ucha Vidyalaya, Anandapur were the



necessary parties to the suit of the plaintiff vide C.S. No.259 of 2014-I. In their absence, the suit for declaration of title filed by the plaintiff was/is not maintainable under law. Because, the deity Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura as well as Sukadevi Balika Ucha Vidyalaya, Anandapur are the necessary parties to the suit.

On this aspect, the propositions of law has already been clarified in the ratio of the following decisions :-

(i) In a case between *State of Orissa and another vrs. Sukuru Polai and others* : reported in *2018(1) CLR -572* that,

Suit property has been recorded in the name of deity Sri Sri Kasi Viswanath Mahaprabhu. The deity is a perpetual minor. In absence of the deity, the suit is not maintainable.(Para-8)

(ii) In a case between *Ishwar Samal. vrs. Keshab Samal and others* : reported in *2018(1) CLR -576 (Para No.10)* that,

Section 69(1) of the Orissa Hindu Religious Endowment Act, 1951 postulates that, whenever, *the trustee or any religious institution is issued in any Civil or Revenue Court* in respect of any property belonging to or given or endowed for the purpose of any religious institution, notice of such suit shall be given by the court concerned to the Commissioner at least a month before commencement of the hearing. It is the bounden duty of the court to issue notice to the Commissioner Endowments.

Neither the math nor the Commissioner Endowments are the party to the suit. No notice was issued by the learned trial court to the Commissioner of Endowments before hearing of the suit. In their absence, suit must fail.

(iii) In a case between *Jagtu vrs. Suraj Mal and others* : reported in *AIR 2010(SC)-3490(D.B.)* that,

Plaintiffs filed the suit seeking declaration of certain rights over the suit land admitting the factual position that, the land belonged to the State.

State is a necessary party. In absence of the owner of the land, no such declaration could be granted.



(iv) In a case between *P.S. Radhakrishnan vrs. A. Indu* : reported in *2018(4) Civ.CC-213(Kerala)(D.B.)* that,

The plaintiff cannot expect to receive discretionary relief of declaration without impleading person against whom declaration is sought or will be effected by declaration or person against whom declaration is directed.

(v) In a case between *Executive Officer Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar vrs. Chandra* : reported in *2017(2) Civ.CC-48(SC)* that,

When plaintiff himself in a suit for declaration and injunction admitted that, one of the Survey Number(RoR) of the suit properties stood in the name of one person, the said person having not been impleaded, suit is hit by non-joinder of necessary party.

(vi) In a case between *Choudury Surat Singh and others vrs. Mohan Lal and others* : reported in *AIR 1971(SC)-240* that,

In a suit for declaration that, a particular person has no interest in the suit premises cannot be gone into in his absence.

(vii) In a case between *Asim Ranjan Das(D) By LRS vrs. Shibu Bodhak and others* : reported in *2018(2) CCC(SC)-2* that,

In a suit for declaration without impleading necessary party (in whose name Patta has been prepared) and without giving opportunity to him cannot be sustained.

(viii) In a case between *District Collector, Srikakulam and others vrs. Bagathi Krishna Rao and another* : reported in *2010(2) CLR(SC)-98* that,

When suit is filed claiming title over forest land, State Government not impleaded as party. Non-joinder of necessary party being fatal, the suit was not maintainable.(Para-4)

(ix) In a case between *Shiv Kumar Tiwari(D) by Lrs. vrs. Jagat Narain Rai and others* : reported in *(2001) 10 SCC-11* that,

Suit filed without making the affected person as a party. Such judgment could not be pressed into service to the detriment of the rights of a party, who was not a party.

(x) In a case between *Rattna Oil Mills/Rice Mills vrs. Paramjit Singh and others* : reported in *2008(1) CCC-40* that,

In a suit for declaration, whose name is in the RoR, he should have been given opportunity of hearing. In his absence, no declaratory decree can be passed in favour of the plaintiff.



(xi) In a case between ***Raj Chandra Bhowmick vrs. Nawab K. Habibulla and others*** : reported in ***AIR 1930 Calcutta-693(D.B.)*** that,

*absence of necessary party is a good cause to refuse declaration.*

(xii) In a case between ***Asim Ranjan Das(D) by L.Rs. vrs. Shibu Bodhak and others*** : reported in ***2018(2) CCC(SC)-02*** that,

Order passed without impleading necessary party and without giving opportunity to him cannot be sustained.

(xiii) In a case between ***Kalyan Kumar Bera vrs. Milan Kumar Khuntia and others*** : reported in ***2023(1) CCC-93 (Calcutta)*** that,

*Once it is established that, the person is a necessary party to the suit, it becomes a question of law, the same can be raised for 1<sup>st</sup> time in appeal.*

24. Here, in this suit/appeal at hand, the recorded deities, i.e., Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura and Sukadevi Balika Ucha Vidyalaya, Anandapur have not been arrayed as parties and no notice has been given by the learned trial court to the Endowment Commissioner as per the provisions of Section 69(1) of the Orissa Hindu Religious Endowment Act, 1951, then at this juncture, the suit of the plaintiff was bad for non-joinder of necessary parties.

25. As per the discussions and observations made above, when it is held that, the deity Shri Rasika Ray Thakura and Shri Laxmijanardan Thakura as well as Sukadevi Balika Ucha Vidyalaya, Anandapur were the necessary parties to the suit vide C.S. No.259 of 2014-I filed by the plaintiff, then at this juncture, even in absence of any written statement of the defendant no.1(respondent no.1), he(defendant no.1) is not precluded under law to agitate the same during the hearing of the suit or appeal.



26. On analysis to the materials on record as per the discussions and observations made above, when it is held that, the plaintiff is not entitled under law to get the decree in the suit vide C.S. No.259 of 2014-I filed by him for various reasons, then at this juncture, the judgment and decree passed by the learned 1<sup>st</sup> appellate court in RFA No.30 of 2019 setting aside the judgment and decree passed by the learned trial court in C.S. No.259 of 2014-I and in dismissing the said suit vide C.S. No.259 of 2014-I of the plaintiff(appellant) cannot be held as erroneous.

For which, the question of interfering with the same through this 2<sup>nd</sup> appeal filed by the appellant(plaintiff) does not arise.

27. Therefore, there is no merit in this 2<sup>nd</sup> appeal filed by the appellant(plaintiff). The same must fail.

In result, this 2<sup>nd</sup> appeal filed by the appellant(plaintiff) is dismissed on contest.

**( A.C. Behera )**  
**Judge**

*Orissa High Court, Cuttack*  
*The 20<sup>th</sup> of February, 2026/ Jagabandhu, P.A.*