

(2008) 11 OHC CK 0054

In the Orissa High Court

Case No : Criminal Revision No. 484 of 2003

Artta Trana Mishra and Others

APPELLANT

Vs

Satyabadi Naik and Another

RESPONDENT

Date of Decision : 05-11-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2008) 41 OCR 910

Hon'ble Judges : Pradip Mohanty, J

Bench : Single Bench

Advocate : Basudev Pujari and R. Mohanty, for the Appellant; K.C. Kar and C.R. Kar, for the Respondent

Final Decision : Allowed

Judgement

Pradip Mohanty, J.—This Criminal Revision is directed against the order dated 28.06.2003 passed by the Sessions Judge, Bolangir in Criminal Revision No. 12 of 2003 by allowing the Criminal Revision with a direction to the present Petitioners to remove all obstructions.

2. A proceeding u/s 133 Code of Criminal Procedure was initiated by the opposite parties before the S.D.M.-cum-Sub-Collector, Bolangir which was registered as C.M.C. No. 75 of 2003. After hearing the parties and verifying the documents including the report of the Tahasildar, the S.D.M. came to a conclusion that there was a public road and it was a public place. Therefore, he directed the opposite parties to remove the obstructions from Plot No. 623 measuring an area of Ac.0.01 decimal under Khata No. 150 of Mouza Sadeipali for the interest of the general public. Against that order, the opposite parties preferred a revision before the Sessions Judge, Bolangir and the said revision was allowed and the conditional order dated 28.01.2003 passed in C.M.C. No. 75 of 2003 of the Court of S.D.M.-cum-Sub-Collector, Bolangir was made absolute with a direction to the Petitioners to remove all obstructions.

3. Learned Counsel for the Petitioners submitted that the learned Sessions Judge has committed error inasmuch as the present Petitioners have never admitted that the RAMJI GUDI situates on an area measuring 5" x 5". In fact, the Revisional Court ought to have considered that a group of persons who wanted to rule the affairs relating to the Ramji Gudi & Ramji Mahaprabhu by hook or crook had moved the petition u/s 133 Code of Criminal Procedure and also instituted Title Suit No. 4 of 2003 in the Court of the Civil Judge (Junior Division). In the said suit the Plaintiff had sought declaration of his right, title and interest over the suit land (Plot No. 623) and the present opposite parties and persons belonging to their group had admitted the existence of the temple on plot No. 623 since long and other structures since 1965. The Revisional Court has illegally passed the impugned order by making the conditional order of S.D.M. absolute since for the self-same issue a suit is pending and the Civil Court is competent to decide the same.

4. Learned Counsel for the opposite parties submitted that the dispute relates to plot No. 623 measuring an area of 0.01 decimal of land in khata No. 150 of village Sadeipali recorded as "SARBASADHARANA RASTA" and in the remarks column it is shown tat Ramjigudi is there. When the plot has been recorded as Rasta in the R.O.R., it has to be used as such and so the obstruction thereon was directed to be removed. He, however, admitted that a suit is pending for declaration of right, title and interest over the case plot. He also submits that Title Suit No. 4/03 [Civil Judge (Junior Division) and T.S. No. 80/2003 (Civil Judge (Senior Division) are pending. His submissions is that in view of pendency of the civil suit, this criminal revision is infructuous.

5. Perused the record. In the case at hand the parties have already approached the Civil Court and the civil Court has made an interim order. The said order is binding on the parties until it is vacated or modified by the same Court or superior Court. In the case of Ram Sumer Puri Mahant Vs. State of U.P. and Others, , the Apex Court expressed identical view and further observed that parallel proceeding should not be permitted to continue. This Court is of the view that the civil Court being in seisin of the matter, any appropriate relief could be obtained there from. In view of the above the orders of the S.D.M., Bolangir and the order of the Sessions Judge confirming the aforesaid order are set aside.

The Criminal Revision is allowed with above observation.