

(1991) 07 OHC CK 0020
In the Orissa High Court
Case No : Criminal Revision No. 130 of 1988

Chila Bewa

APPELLANT

Vs

Hrusikesh @ Harekrishna Nayak and Others

RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1992) 2 OLR 34

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : D.P. Dhal and R.K. Baliarsingh, for the Appellant; B.H. Mohanty, B. Das, J.K. Bastia and R.K. Nayak, for the Respondent

Judgement

A. Pasayat, J.—Order dated 11-12-1987 passed by the Executive Magistrate, Jajpur Road, restraining the petitioner from creating any disturbance over the present possession of the opposite parties is the subject-matter of challenge in this revision application.

2. Petitioner claims to be widow of one Babaji Nayak. According to her, the disputed property along with some other undisputed property were acquired by aforesaid Babajj. The disputed lands were the lease-hold lands recorded in the name of one Rebati Nayak. They were reclaimed by Babaji, who was in possession thereof since long. After the death of Babaji, the petitioner is the sole heir to inherit the property. She was in peaceful possession of the disputed lands long since to the knowledge of all concerned and was also paying rent to the State. The opposite parties herein who were members of the second party are related to the petitioner and taking advantage of her helpless condition interfered with her smooth and peaceful possession by manufacturing some deeds to lay fraudulent claims over the disputed lands. The Executive Magistrate on evaluation of the evidence came to hold that the petitioner and the opposite parties were in joint possession of the property in 1982-33. But the opposite parties having obtained a lease for the period 1987-88 from the competent

authority, the order of restraint as aforeindicated was passed.

3. The learned counsel for the petitioner submits that once the joint possession of the parties in the year 1982-83 was accepted by the Executive Magistrate, any subsequent document relating to a lease should not have been taken note of as the Executive Magistrate was concerned with the possession on the date of passing of the preliminary order. It is also submitted that there was no scope for continuance on the proceeding u/s 145 once a joint possession albeit erroneously was recorded.

4. It is trite law that if the contesting parties are in joint possession, no order can be passed u/s 145. If two parties are in joint possession and/or entitled to joint possession of the property in dispute, and one of them tries to evict the other so as to endanger the public peace, Section 145 of the Code shall have no application. It is, however, not correct to say that when a party claims to be in joint possession of the property in dispute, the dispute is to be regarded as to the mode of possession and the Executive Magistrate loses jurisdiction to decide the matter. Where the dispute is over joint possession of property, and there is likelihood of breach of peace, the Magistrate may exercise jurisdiction u/s 145 of the Code notwithstanding the fact that one of the parties to dispute was in actual physical possession on the date the preliminary order was passed. Here the Executive Magistrate seems to have been more swayed by the documents relating to the period 1987-88. He has not considered the question relating to actual physical possession on the date the preliminary order was passed. The order is therefore, set aside and the matter is remitted back to him to reconsider the matter and dispose of the same in accordance with law.

The criminal" revision is disposed of with above observation.