

(1975) 11 OHC CK 0019

In the Orissa High Court

Case No : Criminal Revision No. 63 of 1974

Gananath Gartia and Another

APPELLANT

Vs

Ugrasan Pradhan and Others

RESPONDENT

Date of Decision : 11-11-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 137, 139

Citation : (1975) 41 CLT 1371

Hon'ble Judges : N.K. Das, J

Bench : Single Bench

Advocate : R.C. Patnaik and P.K. Misra, for the Appellant; B.K. Pal, B. Pal and N. Prusty, for the Respondent

Judgement

N.K. Das, J.—This revision is directed against an order u/s 133 of the Code of Criminal Procedure on the allegation of obstruction of a water channel locally known as "Tal" in village Gaisama by the members of the second party. This "Tal" corresponds to H.S. Plot No. 653 It is contended that this "Tal" consists of three different plots, namely, H.S. Nos. 648, 653 and 1401. It is alleged that the water from the Kata at a high level flows through this "Tal" and goes to another Kata by which the neighbouring lands are irrigated. It is also contended that this "Tal" is used as a pathway by the villagers has held that this "Tal" is a communal land and has directed the members of the second party to remove the obstruction.

2. An enquiry u/s 139, Code of Criminal Procedure (Old) has been held and public nature has been found. Thereafter regular enquiry u/s 137 of the said Code was held whether is any obstruction and if the same is to be removed. The learned Magistrate has relied on the order in a proceeding under the Orissa Prevention of Land Encroachment Act passed against the members of the second party as well as on the oral evidence of five witnesses examined on behalf of the first party. It appears from the record that four witnesses have been examined by the Second party but the learned Magistrate has not discussed their evidence.

He has mostly relied on the evidence of the local Sarpanch. In a case like this he should have discussed the evidence adduced by both sides and after assessing the evidence, both oral and documentary, should have come to a conclusion. A case u/s 133, Code of Criminal Procedure is partly of a civil nature and it is necessary in the interest of justice that evidence of both sides should be considered at length by the Court in coming to a decision. In view of the aforesaid circumstances, the order of the Court below is not sustainable. The revision is allowed and the decision of the Court below is set aside. The case is remitted to the Court below to be disposed of according to law keeping in view the observations made above.