
(2000) 01 OHC CK 0035

In the Orissa High Court

Case No : Civil Revision No. 388 of 1998

Gangadhar Panda and Others

APPELLANT

Vs

Hari Krishna Panda and Others

RESPONDENT

Date of Decision : 04-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 115 , 145

Citation : (2000) 89 CLT 379

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : A.K. Nanda and J. Nayak, for the Appellant; S.P. Mohapatra, for the Respondent

Judgement

P.K. Misra, J.—The defendants have filed these two Civil Revisions under the following circumstances :-

The plaintiff-opposite parties have filed T. S. No.59/97 for permanent injunction against the petitioners. During the pendency of the suit, an application under Order39. Rules 1 and 2 of the CPC (hereinafter referred to as the "C. P. C.") was filed. The trial court passed an order of injunction in respect of Plot Nos. 85, 86 and 91 under Khata No.1 in mouza Ladda but rejected the prayer in respect of "Plot No. 87. The present petitioners filed Misc. Appeal No.. 8 at 1998 against the order of the trial court granting injunction. The plaintiff-opposite parties filed a cross-objection challenging the order of the trial court rejecting the prayer for injunction in respect of Plot No. 87. The appellate court while dismissing the appeal allowed the cross-objection and passed order of injunction in respect of all the four plots.

2. The learned counsel appearing for the petitioners has challenged the order passed by the lower appellate court mainly on the ground that the courts below have not considered the effect of dismissal of the earner suit, numbered as T. S. No. 56/74 filed by the present- plaintiff No.1 against the defendants and similarly the courts below have also not considered the effect of order passed in the

proceeding u/s 145 of the Code of Criminal Procedure (hereinafter referred to as the "Cr. P. C.") vide Mise. Case No.5/73 and Misc. Case No. 113/83. Learned counsel for the petitioners further submitted that both the courts below have been swayed away by the report of the Revenue Inspector dated 22-6-1988 in O. L. R. Case No. 51/75 ignoring the earlier report as well as the subsequent report and further ignoring the fact that the matter has not been finalised and is pending before the High Court in O. J. C. No. 11529/97.

3. The learned counsel appearing for the plaintiff opposite parties on the other hand, submitted that the courts below have referred, to the relevant documents on record and the order is not liable to be interfered with in exercise of power u/s 115. C. P. C.

4. A perusal of the records indicates that the documents relating to earlier suit and earlier proceeding u/s 145, Cr, P. C. has been filed. The lower appellate court has not considered the effect of the decision in the earlier suit or in the earlier proceeding under" section 145. Cr. P. C.. Having regard to the facts and circumstances of "the case, I think interest of -justice would be served by remanding the matter to the lower appellate court for fresh consideration. The lower appellate court is required to find out as, to whether the orders passed in the earlier suit and the earlier proceeding u/s 145. Cr.P.C., relate to the present disputed land and to consider further the effect of such offers. It is, however, made clear that the order of remand should-not be considered to be expression of any opinion one way or the other and the matter has to be decided on its own merit. The matter should be finalised as expeditiously as possible, preferably within a period of three months from the date of receipt of the L. C. R.. The L. C. R. should be sent back to the lower appellate court immediately. The parties are directed to appear before the lower appellate court on 24th January, 2000. There will be no order as to cost.

Revision disposed of.