

(2002) 10 OHC CK 0042

In the Orissa High Court

Case No : Civil Revision No. 373 of 1999

Gangadhar Panda and Others

APPELLANT

Vs

Harlkrushna Panda and Others

RESPONDENT

Date of Decision : 28-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 40 Rule 1, 151

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146

Orissa Land Reforms Act, 1960 — Section 61 , 67

Citation : (2002) 10 OHC CK 0042

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

Bench : Single Bench

Advocate : A.K. Nanda, B.D. Gan, R.R. Panda and J. Nayak, for the Appellant;
S.B. Jena, S.J. Nanda, S. Behera, S.S. Mohapatra and P.R. Ghose, for the Respondent

Judgement

P.K. Tripathy, J.—Both the above noted Civil Revisions are disposed of as per the following orders.

2 Defendant Nos. 1, 3 and 4 in Title Suit No. 59 of 1997 of the Court of Civil Judge (Senior Division), Rayagada are the petitioners whereas the plaintiffs in that suit are the opposite party members. Petitioners challenge the order of interim injunction granted by the Civil Judge as per the impugned order dated 7.11.1998 in M.J.C. No. 47 of 1997, which was confirmed vide the impugned judgment dated 12.5.2000 in Civil Misc. Appeal No. 8 of 1998 disposed of by the Addl. District Judge, Rayagada. For the sake of convenience, petitioners and the opposite parties are described as the defendants and plaintiffs respectively. Defendant No. 2 having died by the date of institution of the appeal and being represented by the other defendants, therefore, she is not a party to this proceeding.

3. The undisputed relationship between the plaintiffs and the defendants is that

one Appudu Panda is the common ancestor of both the parties. He had two wives, named Kalindi and Sunamani. Plaintiffs and defendant Nos. 5 and 6 are the descendants through the first wife Kalindi. Second wife of Appadu is Sunamani (deceased defendant No. 2). Defendant No. 1 is the son of Appudu Panda through Sunamani and defendant Nos. 3 and 4 are sons of defendant No. 1. The landed property in dispute besides the other landed property which was the subject matter of ceiling proceeding is undisputedly belong to the family of Appudu Panda. It is the admitted case of the parties that through a registered partition deed of the year 1955-there was severance of status by allotment of share amongst the co-sharers. According to the plaintiffs, the disputed case land vide Plot Nos. 85, 85, 87 and 91 were allotted to the share of plaintiffs' branch whereas defendants assert that the aforesaid landed properties were not allotted to the share of plaintiffs but remained in the share of the defendants. The dispute in that respect is old enough inasmuch as back is in 1963, Sunamani (defendant No. 2) filed Title Suit No. 15 of 1963 in the Court of District Judge, Koraput at Jeypore, challenging to the partition as per the registered deed of partition. That suit was transferred to the Court of Sub-Judge, Jeypore and registered as Title Suit No. 2 of 1963, and-that was heard and dismissed on merit. That decree was challenged by Sunamani by preferring First Appeal No. 55 of 1965 in this Court, but that appeal was also dismissed on 28.4.1971. That decision is a reported one having been reported in 1971 (1) CWR 881. Similarly, in a proceeding u/s 145, Code of Criminal Procedure under the old Code (Code of Criminal Procedure. 1898) an. order was passed u/s 146, Code of Criminal Procedure and Plot No. 91 was the subject matter of dispute in that proceeding. That dispute was between plaintiff No. 1 Hari Krishna Panda and her mother Hari Priya. Because of the order u/s 145, Code of Criminal Procedure. Title Suit No. 26 of 1967 was registered, and in that suit said Hari Priya conveyed her right title and interest over that plot of land in favour of plaintiff No. 2 who is the wield or plaintiff No. 1. In 1974 plaintiff No. 1 filed Title Suit No. 56 of 1974 in the Court of Munsif, Rayagada with respect to the aforesaid four plots. He claimed the relief of permanent injunction. That suit was dismissed on 25.11.1975. As against that. Title Appeal No. 2 of 1976 preferred by Plaintiff No. 1 Was also dismissed by the Sub-Judge, Rayagada in November, 1976. That litigation was not further perused by the plaintiff No. 1. In 1975. O.L.R. (Ceiling) Case No. 51 of 1975 was initiated relating to the lands of Appudu Panda. Though there were several rounds of litigation relating to confirmation of the draft statement with modification, ultimately as per the decision of the revisional Court under the O.L.R. Act. O.L.R. Revision Nos. 1 and 2 preferred by both the parties was decided by setting aside the order of the Appellate Court and confirming the order of Tahsildar relating to confirmed statement. As against that, defendant No. 1 has preferred O.J.C. No. 11529 of 1997 and that is sub-judice in this Court. When that is the history of the litigations between the parties, plaintiffs filed the above noted Title Suit No. 59 of 1997 claiming the relief of permanent injunction against the defendant with the prayer to restrain them from interfering with the peaceful possession of the plaintiffs with respect to the said four plots. Along with the plaint, plaintiffs also

filed application under Order 39, Rules 1 and 2, CPC registered as M.J.C. No. 47 of 1997, wherein they prayed for interim injunction.

4. The Civil Judge, Rayagada allowed the application for interim injunction with respect to plot Nos. 85, 86 and 91 on the ground that plaintiffs have proved the factum of prima facie possession on the basis of confirmed statement in the ceiling proceeding. He, however, rejected the prayer for interim injunction with respect to plot No. 37 on the basis of the report of the Revenue Inspector submitted in the ceiling proceeding to the effect that plaintiffs are not in possession of the said plot. Learned Addl. District Judge, Rayagada, on 19th December, 1998 dismissed that appeal and allowed the cross-objection filed by the plaintiffs for grant of temporary injunction relating to Plot No. 87. An application filed by the defendants alongwith the Misc. Appeal for stay operation of the order of injunction passed by the Civil Judge having not been by the appellate Court, on 13.11.1998 defendants preferred Civil Revision No. 388 of 1998. The dismissal of the appeal by the Addl. District Judge was challenged by the defendants vide Civil Revision No. 439 of 1998. Both the revisions were heard and disposed of by a common judgment by learned Single Judge of this Court (Hon'ble Shri P.K. Mishra, J., as His Lordship then was) on January 4, 2000. Accepting the contention of the defendants that effect of the earlier decisions in the Civil Proceedings having not been considered by the Courts below, the order of injunction granted only on the basis of the ceiling proceeding is vulnerable and against the interest of law and justice, this Court remanded the matter for fresh adjudication with the following observation:

4. A perusal of the records indicates that the documents relating to earlier suit and earlier proceeding u/s 145, Code of Criminal Procedure had been filed. The lower appellate court has not considered the effect of the decision in the earlier suit or in the earlier proceeding u/s 145 Code of Criminal Procedure. 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, Code of Criminal Procedure, relate to the present disputed land and to consider further the effect of such orders, xx xx xx

5. After receipt of the record on remand, learned Addl. District Judge afresh heard the matter and on 12.5.2000 passed similar order with same conclusion by dismissing the appeal. That order is under challenge in Civil Revision No. 263 of 2000. Criticism made by the defendants on the present impugned order is that the appellate Court did not abide by the direction issued in the aforesaid remand order. On a bare reference to the impugned order, this Court finds substance in that criticism inasmuch as learned Addl. District Judge, Rayagada in fact, did not consider the nature of the dispute, nature of the decrees and the consequences thereof, but simply decided the appeal by referring to Sections 61 and 67 of the O.L.R. Act and holding that the decision of the Tahasildar notwithstanding earlier

decision of the Civil Court has the binding effect and operates as res judicata having not been challenged in the Civil Court. Notwithstanding that, neither party has argued for further order of remand nor this Court finds it necessary to make a further order of remand because the dispute relating to interim injunction should be resolved in appropriate manner and not by asking the parties to run from pillar to post when that is avoidable.

6. After disposal of Misc. Appeal No. 8 of 1998, when Civil Revision. Nos. 388 and 439, both of 1998 were pending in this Court, plaintiffs filed an application u/s 151. CPC in the Court of Addl. District Judge, Rayagada. That application was registered as M.J.C. No. 4 of 1999. in that application plaintiffs prayed to issue a direction to the defendants as well as to the local police either for securing the custody of the harvested crops to the possession of the plaintiffs or to be kept in the custody of the police, in that respect plaintiffs also moved an application, which was registered as Misc. Case No. 381 of 1998 in Civil Revision No. 388 of 1998. On 19.11.1998 the following order was passed by this Court.

Considering the facts and circumstances the petitioners and opp. parties are all restrained from harvesting the crops standing on the suit lands being plot Nos. 91, 85 and 86 of Khata No. 1 of mouza Ladda till 3rd December, 1998 when Civil Misc. Appeal No. 8/98 and the stay petition filed therein has been fixed for hearing by the Earned Addl. District Judge. Rayagada. It is made clear that the learned Addl. District Judge, Rayagada will be at liberty to decide the stay petition or the appeal without taking into account this interim order. However, if any of the parties wants vacation or modification of this interim order, he will be at liberty to apply before this Court.

If the requisites are not filed by tomorrow in the main case, the Interim order will stand vacated.

Thereafter, on 4.9.1999, M.J.C. No. 4 of 1999 was disposed of by learned/Addl. District Judge Rayagada. He passed order rejecting that application on the ground that after disposal of the appeal he had no jurisdiction to deal with the subject matter of dispute or to pass any order relating to the crops. That order dated 4.9.1999 is challenged in this Court in Civil Revision No. 373 of 1999.

7. Both the Civil Revisions were heard analogously and disposed of by this common judgment.

8. Provision in Section 115, CPC confers revisional jurisdiction with clear mandate of law that revisional Courts should interfere with the impugned order, if the Court below

(i) exercised the jurisdiction not vested in it by law, or

(ii) failed to exercise the jurisdiction so vested, or

(iii) has acted in exercise of jurisdiction but illegally or with material irregularity.

9. The provision of law in Order XXXIX, CPC and the judicial precedence are clear

enough to provide guideline that when there is a prayer for temporary injunction, the concerned Court is to consider, (1) whether the applicant has a prima facie case in his favour, (2) whether balance of convenience leans in his favour, and (3) whether refusal of injunction shall result in irreparable loss and injury. In that context, on a reference to the above noted fact and the findings-recorded by the Courts below, this Court finds that though the conclusion of the Courts below relating to the existence of a prima facie case is not liable to be disturbed but their findings with respect to balance of convenience proceeds on the basis of illogic inasmuch as they rely on the Amin's report in a ceiling proceeding as the backbone of such finding. The Courts below have not tried to find out if the confirmed statement in the ceiling proceeding has been acted upon by the parties as well as the State Government notwithstanding pendency of the writ application. The Courts below and particularly the Appellate Court, after the order of remand, did not consider the effect of the overlapping decrees and the order in the proceeding u/s 145, Code of Criminal Procedure. (which has already been noted while narrating the facts of the case). Without looking to those aspects the Courts below could not have come to a finding relating to balance of convenience. In other words, the jurisdiction vested In the Courts below for consideration of the legal issue with due reference to the facts and evidence on record was not considered in accordance with law and therefore, the Courts below failed to properly exercise the jurisdiction vested in them while considering an application for temporary injunction.

10. The aforesaid finding is not sufficient to refuse the relief of temporary injunction to the plaintiffs if otherwise they are entitled to the said relief. In that context it is found that because of several round of litigations and the decrees which have been passed overlapping one Anr., at this stage it is difficult to take a prima facie view that plaintiffs have right, title and interest over the suit property so as to protect their possession and the defendants should be injected during the pendency of the suit. Therefore, this Court does not find the balance of convenience in favour of the plaintiffs to grant them relief of temporary injunction. For this reason and the reasons indicated in the preceding paragraphs, this Court finds the order of temporary injunction with respect to the subject matter of the suit is legally not sustainable and factually not maintainable. Accordingly, the impugned judgment under challenge in Civil Revision No. 263 of 2002 stands set aside and the order of injunction stands vacated.

11. The aforesaid order of vacating injunction may give rise to a dispute between the parties or scramble for possession. Therefore, this Court feels that if there shall be any such scramble for possession, on the application of either of the parties, the Court below shall consider to pass an appropriate order under Order 40, Rule 1, CPC This Court does not impose this idea either on the parties or the trial Court, but suggests a possible interim solution in the event of dispute between the parties after the aforesaid order of vacating temporary injunction.

12. So far as the order under challenge in Civil Revision No. 373 of 1999, this Court finds that learned Addl. District Judge has adopted a correct approach for rejecting the application, vide the impugned order dated 4.9.1999 passed in M.J.C. No. 4 of 1999, inasmuch as after disposal of the Miscellaneous Appeal he was functus officio and had no jurisdiction to pass order for custody of the harvested crops or the standing crops. Accordingly, that order is not interfered with.

In the result. Civil Revision No. 263 of 2000 is allowed and Civil Revision No. 373 of 1999 is dismissed. Cost of the litigation shall abide the result of the suit. Hearing fee is assessed at contested scale.