
(1979) 12 OHC CK 0011
In the Orissa High Court

Ghana Bhoi and Others

APPELLANT

Vs

Natha Bhoi and Others

RESPONDENT

Date of Decision : 17-12-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 147

Citation : (1980) 49 CLT 256 : (1980) CriLJ 536

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Judgement

S. Acharya, J.—By the impugned order in a proceeding u/s 147, Cr. P. C. the court below has declared that the first party members have got the right _ to graze their cattle on the lands in question. After giving that finding the court below has prohibited the second party members from interfering with the exercise of the said right by the first party members over the lands in question.

2. It is contended by Mr. Das, the learned Counsel for the petitioners, that the court below passed the impugned order without considering the evidence on record to the effect that the lands in question have been settled with different members of the second party and that they are in possession of the same on payment of rent.

3. From the impugned order it is quite evident that the court below on a discussion and consideration of the oral and documentary evidence on record has arrived at the finding that the second party members have formed a combination and have tried to grab the gochar lands in question by converting the same as their own lands. It has also found that the said lands are communal lands and the first party members have taken necessary steps to preserve the same as gochar lands and they and the villagers of Kamarpada and other neighbouring villagers have been grazing their cattle on the said lands since a long time. On the said findings the court has declared that the first party members along with the villagers of Kamarpada and other neighbouring villages have the right to use the lands in question for grazing their cattle thereon. On the above finding and

declaration the court has prohibited interference by the other party with the exercise of the said right by the first party. True it is that the court in the impugned order has not attached much importance to the question of title of any of the parties to the said lands or the right of any of the (parties to the exclusive possession of the same. The (title of the second party members over the lands in question and their right to possess the same are not the deciding facts in a case u/s 147, Cr. P. C. as the first party members claim the right to use that land only for the limited purpose of grazing their cattle thereon. The occasion for a proceeding u/s 147, Cr. P. Code generally arises when one party claims such right on the land of others. So though the land belongs to one party and they on that basis have the right to possess the same that would not deter the court to declare the right of user of the same in a particular manner by another party, on satisfactory proof of that fact. A particular right of user can be exercised by a party even though they are not the owners and/or in exclusive possession of the land it question in its entirety. In this case the first party members do not claim title to or the right to exclusive possession of the said lands; they only assert their right to graze their cattle on the lands In question on the basis of immemorial user for that purpose. So the court below has not committed any mistake of fact or law in not attaching importance to the title and the right of possession of any of the parties to the lands in question.

4. On a perusal of the impugned order and on hearing Mr. Das I do not .find any merit in this revision so as to interfere with the impugned order. The revision is accordingly, dismissed.