

(1970) 01 OHC CK 0009

In the Orissa High Court

Case No : Civil Revision No. 196 of 1967

Gobinda Parida and Others

APPELLANT

Vs

Chakradhara Routray and Others

RESPONDENT

Date of Decision : 12-01-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(3)

Citation : (1970) 01 OHC CK 0009

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : D.P. Mohapatra and G.B. Patnaik, for the Appellant; P.K. Dhal and S.C. Sahu, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—This is an application u/s 115, C. P. C. against the appellate order passed by the learned Subordinate Judge of Kendrapara reversing the action of the learned Munsif on an application under Order 39, Rule 2 (3), Civil P. C. There was ad interim injunction against the petitioners who were defendants in a pending suit (T. S. No. 185 of 1965) in the court of the Munsif, Kendrapara restraining them from cutting away the paddy. It is alleged that in spite of the service of the order of injunction on 20-8-65 the petitioners cut and removed the paddy crop. Evidence was taken and the learned Munsif found that there had been a violation of the order of injunction in spite of service of notice, but he did not give any punishment. The lower appellate court on the findings recorded by the learned Munsif came to hold that this was a case where the violators should be punished for violation of injunction. It, therefore, directed that movable properties valued at Rs. 100 of the petitioners be kept under attachment. It is against this order that the present civil Revision has been filed.

2. Mr. Patnaik, learned counsel for the petitioners, raised a contention that the injunction having ultimately been dissolved the learned Subordinate Judge should not have visited the petitioners with any punishment In support of his contention

he placed reliance on a decision reported in Monoharlal Vs. Sri Prem Shankar Tandon and Others, . I find it difficult to accept the contention of Mr. Patnaik in view of the fact that on the date of the impugned action there was injunction in force. In such a matter what the Court is concerned with is not the ultimate decision in the matter, but as to whether on the date the impugned act was committed it was in violation of an existing restraint order to the knowledge of the violators. In the circumstances, I cannot interfere with the findings recorded by the courts below that there has been violation, nor do I propose to interfere with the finding of the lower appellate court that it is a case where there should be punishment.

8. Coming, however, to the question of punishment I find that the learned Subordinate Judge has not indicated the period for which the attachment would be effective. I would give a direction taking an over-all picture of the entire matter that movable properties worth Rs. 100 belonging to the violators who were opposite parties 4 to 10 in the original proceeding would be kept under attachment for a period of three months. Subject to this clarification in the order the Civil Revision is dismissed. I do not direct any costs of this proceeding.