

(2000) 05 OHC CK 0038

In the Orissa High Court

Case No : Criminal Revision No. 8 of 1995

Gramya Thakurani (Samaleswari)

APPELLANT

Vs

Smt. B. Ballamai and Others

RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1), 145(2), 145(4), 147
Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972 —
Section 22

Citation : (2000) 90 CLT 317

Hon'ble Judges : B.P. Das, J

Bench : Single Bench

Advocate : N.C. Pati, for the Appellant; S.N. Mohapatra, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Das, J.—In the present revision application the Petitioner challenges the order dated 4-11-1994, passed by the learned Addl. Sessions Judge, Bargarh in allowing the Criminal Revision No. 84/120 of 1993 and remitting back the case to the lower court with a direction to the Subdivisional Magistrate (in short "the S.D. M.") to afford an Opportunity to the parties to adduce evidence regarding the possession of the land and after hearing the parties, pass necessary orders u/s 145(4), Code of Criminal Procedure, 1973 (for short "the Cr. P.C.").

2. The brief facts leading to the revision are that the disputed property was the Jhankari land of one Bidyadhar Bhue and Ors. and their names have been recorded as such in Hamid settlement record of rights. The said land along with other lands vested in the State of Orissa under the Offices of Village Police Abolition Act, 1964. The disputed property was reserved for Seva Puja of the deity "Samaleswari" under the Sebayat marfatdarship of Bidyadhar Bhue and his brother Cheru Bhue in v. P.A. Case No. 532 of 1965-66. When consolidation operation was commenced in the said area, the land register was prepared in the name of the deity describing Leha Bhue, son of Bidyadhar Bhue and Bada Bhue

and Sanu Bhue sons of Cheru Bhue as the marfatdars. The same was duly published and no objection was filed by any of the parties and ultimately after completion of all the stages of consolidation proceeding, the final records of right was published in the name of the deity u/s 22 of the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act, 1972. It is also the case of the Petitioner that he was possessing the said land basing on an amicable arrangement between himself and his brother. While the matter stood thus, the opposite parties, who have no right, title over the said land tried to take away paddy grown by the Petitioner at ripen stage, for which an application u/s 145, Cr. P.C. by Gramya Thakurani (Samaleswari) represented through Sebayat, Laba Bhue (petitioner was filed in the court of the S.D.M.. Bargarh, which was registered as Criminal Misc. Case No.77 of 1993, alleging therein that the Petitioner first party was in possession of the disputed land and the Petitioner had performed all agricultural operations over the said land, and prayed for attachment of the property u/s 147, Cr. P.C.. Accordingly, the learned S.D. M., Bargarh directed to keep the land under a receiver to be appointed by the Officer-in-charge, Attabira P.S. till litigations pending before the Consolidation authority and in the court of the A.D.M., Bargarh are over, Against the aforesaid order, the present opposite parties moved the Addl. Sessions Judge, Bargarh in revision registered as Criminal Revision No. 84/120 of 1993. The plea taken by the present opposite parties before the revisional court, was that, the present opposite parties were in possession of the suit land as a tenant and such possession was reported by the concerned R.I. in his report in v. P.A. Case No. 532 of 1965-66 filed by the present Petitioner. It was further alleged that the Tahasildar without serving any notice on the second party directed to keep the suit land reserved for Sevapuja of the deity in v. P.A. Case No. 532 of 1965-66. While the present opposite parties came to know about the settlement made by the Tahasildar in favour of the present Petitioner and when the present Petitioner tried to take forcible possession of the suit land, the opposite party No. 1 after getting certified copy of the order, passed in v. P.A. Case No. 532 of 1965-66 preferred an appeal before the learned Addl. District Magistrate, Sambalpur being numbered as v. P.A. Appeal No. 6 of 1993. Only after the appeal was filed, the present Petitioner as alleged, by the opposite parties, Initiated a proceeding u/s 145, Cr. P.C. falsely claiming possession of the suit property, even though, the fact is that the present opposite parties are in physical possession over the suit property. As it appears from the submission made by the opposite parties, they are claiming their right, title and interest over the said property by claiming Bhag tenancy pdor to vesting, by virtue of the sale deed dated 28-8-64, as well as title by way of adverse possession.

3. From the submissions made by the parties, it reveals that in the meantime, the v. P.A. Appeal so filed by the present opposite parties, has been decided in their favour, and the same was challenged before the Member, Board of Revenue, Orissa, who negatived the order passed by the appellate court. Now a writ application bearing O.J.C. No. 11516 of 1999, challenging the order of Member,

Board of Revenue is pending before this Court at the behest of the present opposite parties.

4. Now let me examine whether the impugned order passed by the learned Addl. District and Sessions Judge is legally sustainable. Admittedly, this is a proceeding u/s 145, Cr. P.C., The main plank of argument in support of the application is that the right of the Petitioner has been declared by competent court and he is paying rent, water tax, etc.. That apart, in view of the consolidation record of rights prepared in his favour coupled with the order passed by the Member, Board of Revenue, Orissa, according to the counsel for the Petitioner, the learned Magistrate was justified in not processing with the matter for further enquiry relating to possession. Hence, there was no occasion on the part of the revisional court to remit the matter back to the lower court for fresh disposal, with a direction to give finding relating to possession.

5. Several decisions were cited before me by the learned Counsel for the Petitioner to fortify his argument. Be that as it may, admittedly, it is a proceeding u/s 145, Cr. P.C.. In such proceedings, the Magistrate has to find out without reference to merits of the claim of any of the parties with regard to right to possess, the subject of dispute, peruse the statements so put in, hear the parties receive all such evidence, if any, as he thinks necessary and, if possible, decide which of the parties was, on the date of the order made by him under Sub-section (1) of Section 145, Cr. P.C. in possession of the subject of dispute.

6. Proviso (2) and (4) of Section 145, Cr. P.C. being relevant in this case are quoted hereunder:

S.145- Procedure where dispute concerning land or water is likely to cause breach of peace-(1) xx xx xx

(2) For the purpose of this section, the expression "land or water" includes buildings markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) xx xx xx

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, pursue the statements so put in, hear the parties receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under Sub-section (1) in possession of the subject of dispute.

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the

date of his order under Sub-section (1).

xx xx xx

7. From the aforesaid provisions, it is crystal clear that the learned Magistrate while dealing with a matter u/s 145, Cr. P.C. is not to decide title, and the possession contemplated under the said section, is the actual possession of the subject of dispute. Actual possession means, actual physical possession. This view of mine gains support from a decision of this Court, reported in 1987 (2) O.L.R. 381 (Gopa Behera v. Fakir Mohan Behera and Ors., wherein, it is held that actual possession means, actual physical possession. It means the possession of the person, who has his feet on the land, who is ploughing it, sowing and growing crops in it actually irrespective of whether he has any right or title to possess it or not. Actual possession is not the same as right of possession nor does it mean lawful or legal possession.

8. As it appears from the order passed by the trial court, the learned Magistrate never gone into the aspect of possession and passed an order in a cryptic manner, which has been rightly set aside by the learned Addl. Sessions Judge, Bargarh by remitting back the matter to the trial court with direction to make an enquiry regarding possession and pass necessary order after such enquiry.

9. In view of the facts and position of law discussed above, I find that the order passed by the Addl. Sessions Judge is legally justified and there is no error requiring interference of this Court. Accordingly, the revision petition is dismissed and the order of the learned Addl. Sessions Judge, Bargarh passed in Criminal Revision No. 84/120 of 1993 is confirmed.

10. The L.C. R. be sent back forthwith.

Crl. revision dismissed.