

(1986) 11 OHC CK 0006

In the Orissa High Court

Case No : Miscellaneous Appeal No. 298 of 1981

Kamini Debi (and after her) Nanda Kishore Dash and Others APPELLANT
Vs

Purna Chandra Nath and Others RESPONDENT

Date of Decision : 14-11-1986

Acts Referred:

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

Citation : (1987) 63 CLT 326

Hon'ble Judges : H.L. Agrawal, C.J

Bench : Single Bench

Advocate : M.M. Das, for the Appellant; R.C. Rath, for the Respondent

Final Decision : Dismissed

Judgement

H.L. Agrawal, C.J.—The appeal arises out of a proceeding initiated by the Plaintiff-Appellant under Rule 2-A of Order 39 of the Code of Civil Procedure. The question is as to whether a person prima facie not personally bound by an order of injunction can also be covered within the mischief of Rule 2-A of Order 39.

2. In a suit for possession of certain agricultural lands, an order of injunction was passed on 14-3-1978 against the Defendants restraining them from interfering with the possession of the Plaintiff. An application under Order 39, Rule 2-A was filed by the Plaintiff in the trial Court alleging that on 26-4-1979 one Lokanath Nath, the father of Respondents 1 and 2, had obstructed the Appellant and his men from ploughing the field and had taken away the plough. The Appellant, however, did not implead the said Lokanath Nath as a party in the application. The allegation was denied by the Respondents. Both parties led evidence on the basis of which the trial Court recorded a finding that there was some alteration between P.W. 4 and the said Lokanath over the land. Thus, the trial Court while accepted the allegation of the Appellant to some extents it took the view that as no punishment is contemplated for a person who is not a party to the suit and thus not bound by the order of injunction no punishment can be imposed under Rule 2-A. It also came to the conclusion that Respondents 1 and 2 cannot be

taken to have interfered with the possession of the Appellant by violating the order of injunction.

3. The ground assigned by the trial Court for dismissing the application, in my view, is not wholly correct, but, none the less, the order has got to be maintained for different reasons.

The word (x "person" III Sub-rule (1) of Rule 2 of Order 39 is wide enough to include everyone in the group of the concerned persons, i.e., the agents, servants and workmen. etc. This proposition is well settled by an authoritative decision of the Supreme Court in the case of the The State of Bihar Vs. Rani Sonabati Kumari, . This view is based upon a general public policy. As otherwise the order of injunction could be defied very conveniently by a party bound by the same by setting up any third person and the Court would be helpless to enforce the order and would remain a mock spectator to the injury sustained by the party for whose proposition such an order was passed.

4. In my view, a person not a party to the suit is also liable to be proceeded against for his act of abetting the order of injunction, but the difficulty for the Appellant is that the said Lokanath Nath has not been made a party to the proceeding. A proceeding under Rule 2-A of Order 39 being quasi-criminal in nature, in order to punish any person, if at all, it is essential that he should be impleaded as a party. In any case, under the general principle the Defendants' liability for breach of the order of restraint through their agents or servants is obvious. But, in order to bring home the charge, it was, essential for the Appellant to lead sufficient and unimpeachable evidence before the trial Court that the said Lokanath Nath was a person who I though was the father of Defendants 1 and 2, was acting as their agent. Mere relationship in the absence of any legal evidence in a quasi-criminal proceeding, in my view, would not be sufficient to fasten the liability for the punishment under Rule 2-A of Order 39 of the Code.

5. For the reasons discussed above, the appeal must fail and the same is hereby dismissed. No costs.