
(2003) 03 OHC CK 0063
In the Orissa High Court
Case No : C.R.P. No. 5 of 2002

Krushna Nayak and Others

APPELLANT

Vs

Smt. Panchami Behera and Others

RESPONDENT

Date of Decision : 03-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 115(1)

Citation : (2003) 95 CLT 736 : (2003) OLR 99 Supp

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

Bench : Single Bench

Advocate : Manoj Mishra, P.K. Das, S. Senapati and P.K. Nanda, for the Appellant; B.N. Rath, T.N. Rath, S.K. Jethy, M.K. Panda, P.S. Samantray, S.B. Mohanty, M.K. Singhdeo, P.R. Sahoo and P.K. Behera, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Heard.

2. This Civil Revision stand disposed of at the stage of admission on consent of parties after hearing argument from both the sides.

3. Petitioners are the defendants and the opposite party are the plaintiffs in T. S. No. 136 of 2001 of the Court of Civil Judge (Junior Division) Berhampur. Admittedly, the suit property belongs to the father of the plaintiffs and the defendant No. 1. The other defendants are the son's of defendant No. 1. It is also the admitted fact that defendant No. 1 went on adoption to the family of one Mahakala Nayak. It is also the admitted case of the parties that the suit properties is the property belonging to the father of the plaintiffs and the natural father of defendant No. 1. Plaintiffs apprehending dispossession at the instance of defendant No. 1 and his sons filed a suit for permanent injunction and also filed application under Order 39, Rule 1 and 2, CPC. being registered as M. J. C. No. 73 of 2001. They prayed for temporary injunction. Learned Civil Judge (Jr. Divn.), Berhampur on due consideration of the pleadings of the parties and their

contention though found existence of a prima facie case, in favour of the plaintiffs but refused to grant injunction on the ground that plaintiffs could not possess the documents relating to the sale deeds through which their father purchased the land and defendant No. 1 possesses rent receipt of one year and therefore, the balance of convenience does not lean in favour of the plaintiffs. Accordingly, learned Civil Judge refused the prayer of temporary injunction in favour of the plaintiffs. As against that plaintiffs preferred Misc. Appeal No. 27 of 2001 in the Court of District Judge and after it being re-numbered as Misc. Appeal No. 8 of 2002 in the Court of Second Addl. Dist. Judge the said Court heard and disposed of that appeal as per the impugned judgment passed on December 6, 2002. Learned Addl. District Judge taking note of the above contentions of the parties found title and possession with the plaintiffs and accordingly passed the order of temporary injunction.

4. Learned counsel for the defendants/ petitioners argues that in the absence of any illegality in the order of the Civil Judge the Addl. Dist. Judge should not have interfered with that order. He further argues that at the best the appellate Court should have passed an order of status quo because position on record indicates that petitioners are in possession of the property. Learned counsel for the opposite party advances argument supporting to the impugned judgment of the learned Addl. Dist. Judge.

5. Revisional jurisdiction is vested with the Court and to be invoked in the event this Court finds that the Sub-ordinate Courts while deciding any case have committed jurisdictional error either under Clause (a) or Clause (b) of Section 115(1), CPC. or having jurisdiction acted illegally or with material irregularity as provided in Clause (c) of Section 115(1), CPC.

6. The Appellate Court is also a Court of fact and it has the jurisdiction to appreciate evidence on record to find out correctness in the finding recorded by the Civil Judge and to reach to its independent conclusion thereof or to correct the view of the original Court, In this case, learned Addl. District Judge has done that much. While assessing and appreciating the evidence on record he agreed with the finding of the trial Court regarding existence of prima facie case. On appreciation of documents and contention of the parties relating to balance of convenience and irreparable loss, he noted that the single rent receipt possessed by the defendant No. 1 besides the sale deeds under the given pleadings of the parties, is of no consequence to infer possession with him. He also recorded that the revenue records and the Record of Rights prepared long back in the names of plaintiffs and rent receipts possessed by them prima facie proves their possession. Accordingly, he recorded that the other two ingredients also stand in favour of the plaintiffs. From the above facts and circumstances this Court does not find any of the requirement of law u/s 115(1), CPC., being attracted to interfere with the impugned order. In that context, it is open to this Court to re-assess the facts and evidence only when the view taken on that score by learned Addl. District Judge is found to be illegal or perverse. As noted above, the finding

recorded by learned Addl. District Judge regarding existence of prima facie case, balance of convenience leaning towards the plaintiffs and the irreparable nature of loss which plaintiffs will sustain if they are not protected, are all factual finding supported with good reasons and on due consideration of the pleas, pleadings and evidence. Thus, the Civil Revision stands dismissed and parties are directed to bear their respective costs of litigation so far as this forum is concerned.

7. Learned counsel for the petitioners states that being emboldened with this order, plaintiffs shall try to delay disposal of the suit to keep him out of possession and therefore, at least direction may be issued for early disposal of the suit inasmuch as defendants have already filed their written statement. Learned counsel for the plaintiff-opposite party has no objection for early disposal of the suit. In a dispute of the present nature, indeed it should be the endeavour of the trial Court to dispose of the suit expeditiously unless the party, against whom the order of injunction has been passed, fails to co-operate in that respect. Under such circumstances, when both the parties agree for early disposal of the suit, this Court directs learned Civil Judge (Junior Division), Berhampur to hear and dispose of the suit, as far as practicable, within a period of six months from the date of receipt of a copy of this order. In the event of non-disposal of the suit within that period, if defendants shall move application under Order 39, Rule 4, CPC., learned Civil Judge, after affording opportunity of hearing to both the parties, shall pass appropriate order on taking into consideration the conduct of the parties and the circumstance relating to non-disposal of the suit within the targeted period and if the same is attributable to the plaintiffs.