
(1989) 03 OHC CK 0023

In the Orissa High Court

Case No : Criminal Revision No. 522 of 1988

Minaketan Naik and Others

APPELLANT

Vs

Bhagaban Pati and Others

RESPONDENT

Date of Decision : 13-03-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144, 145, 145(5), 397(2)
Orissa Estates Abolition Act, 1951 — Section 6, 7, 8

Citation : (1989) 67 CLT 744

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

Bench : Single Bench

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

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—The revision is directed against the order passed by the learned Sessions Judge, Berhampur, dropping the proceeding u/s 145(5) of the Code of Criminal Procedure (hereinafter referred to as "the Code"),

2. Facts of the case may be stated in brief. The disputed land measures 2.52 acres appertaining to survey No. 1781 180 under khata No. 201/68 of village Bhimapur which was originally a portion of survey No. 178/15 under khata. No. 201 having a total extent of 223.08 acres of land.. Ram Naik was the admitted owner of the disputed land which in local measure constituted 24 bharanams. The said Rama Naik had three daughters named Subhadra, Manjari and Rukmini. By executing a will dated 19-7-1931 he bequeathed 9 bharanams to Subhadra, 8 bharanams to Manajari and 7 bharanams to Rukmini. After his death, the above named daughters possessed portions of the disputed land bequeathed in their favour. Manjari sold 8 bharanams of land in favour of Labanya Pati, father of second party members by a registered sale deed dated 19-2-1960. 9 bharanams of land which Subhadra possessed was succeeded by her daughter Kandhuni, the mother of the first party members. In the year 1960 there was a proceeding u/s 145 of the Code in which all parties were involved. Kandhuni and the members of

the first party also filed a suit for partition (Title Suit No. 78 of 1966) in the court of the Subordinate Judge, Berhampur, in which by judgment dated 13-5-1967 lands bequeathed in favour of Rukmini and Manjari by Rama Naik were excluded from the purview of partition. In First Appeal No. 188 of 1967 the decree was confirmed: It further appears that in the year 1966, when the civil litigations were still pending, the disputed land being Ram lands vested in the State of Orissa under the provisions of the Orissa Estates Abolition Act (hereinafter referred to as "the Act"). Claims were preferred under Sections 6, 7 and 8 of the Act by the first party members and the disputed land was settled in their favour. Accordingly rent roll was prepared as they were in physical possession thereof. The father of the second party members who had applied for settlement of land on the basis of the sate deed executed in favour of Manjari under Sections 6, 7 and 8 of the Act but his claim case was dismissed for default on 31-5-1968. The second party members again applied for settlement of some land under the Act and 1.95 acres of land were settled in their favour. After such settlement dispute was raised u/s 144 which was converted to a proceeding u/s 145 of the Code and a preliminary order was passed by the Executive Magistrate. The second party, members filed a petition" under Sub-section (5) of Section 145 of the Code but the Executive Magistrate held that both parties were, claiming possession and so there was apprehension of, breach of peace. By order dated 15-2-1988 he rejected the petition and refused to cancel the preliminary order. Against the aforesaid order, criminal revision was preferred before the, learned Sessions Judge who by the impugned order dropped the proceeding.

3. On a conspectus of facts and claims raised by both parties, it appears that both parties claim possession in respect of the disputed land on the basis of decrees and orders. While the second party members base their claim on the civil court decree, the first party members refer their claim to the orders of settlement under the Act and the R.O.R.. While the Executive Magistrate took the view that there was scramble for possession by both parties and so there was still apprehension of breach of peace for which dropping of the proceeding and cancellation of the preliminary order u/s 145(5) of the Code was unwarranted the learned Sessions Judge took the following view:

(a) The Executive Magistrate did not consider the documents produced by the parties:

(b) In the suit, claim of second party members in respect of the disputed land was upheld both in respect of title and possession:

(c) A similar view was also taken in a proceeding u/s 144 just six days before the initiation of the proceeding u/s 145 and it was not necessary for a party to approach the civil Court over and over again if a rival party would successively initiate proceedings under Sections 144 and 145 of the Code: and

(d) In such an event, the aggressor party should be bound down u/s 107 of the Code.

4. On the contentions raised by Mr. Y.S.N. Murty, learned Counsel appearing for the Petitioners, and Mr. N.C. Pati learned Counsel appearing for the opposite parties the following questions arise for consideration:

(i) Whether the order of the Executive Magistrate dated 15-2-1988 was an interlocutory order and so revision before the learned Sessions Judge u/s 397(2) of the Code was barred; and

(ii) Whether in view of the documents produced by the parties particularly the, civil, court decree which was confirmed "in First Appeal by this Court there was necessity for continuance of the proceeding u/s 145 of the Code.

5. Indisputably on the petition filed by the second party members under 145(5) of the Code the Executive Magistrate on hearing both parties concluded that there was Scramble for possession of the disputed land" between both parties and as such there was apprehension of breach of peace. Therefore, it was inexpedient to cancel the preliminary order and drop the proceeding. If this order was purely on interlocutory one within the meaning of Section 397(2) of the Code, then obviously the learned Sessions Judge had to jurisdiction no entertain the revision and on that ground the order, passed by him shall be liable to be set aside. But it on the other, hand, the order of the Executive Magistrate was not interlocutory in nature and was either a final order or an order of the moment then the learned Sessions Judge had jurisdiction to decide as to whether the proceeding should be dropped by cancellation of the preliminary order under the provisions of Section 145(5) of the Code.

6. In a criminal proceeding; the principles as to what types of orders are interlocutory or final or orders of the moment have been laid down in two decisions reported in Amar Nath and Others Vs. State of Haryana and Another, and Madhu Limaye Vs. The State of Maharashtra, . In the case of Amar Nath and Ors. v. State of Haryana and Ors. (supra) it was held as follows:

... It seems to us, that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or, temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused or decides certain rights of the parties cannot be said to be an interlocutory order, so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses adjourning cases, passing orders for bail calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie u/s 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect at the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court.

In the case of Madhu Limaye Vs. The State of Maharashtra, , the view expressed earlier was" approved and it was held as follows:

Ordinarily and generally the expression "interlocutory order" has been understood and taken to mean an converse of the term "final order",

x x x

But in our judgment such an interpretation and the universal application of the principle that what is not a final order must be an interlocutory order is neither warranted nor justified. If it were so it will render almost nugatory the revisional power at the Sessions Court or the High Court conferred on it by Section 397(1). On such a strict interpretation, only those orders would be revisable which are orders passed on the final determination of the action but are not appealable, under Chapter XXIX of the Code. This does not seem to be the intention of the Legislature when it retained the revisional power of the High Court in terms identical to the one in the 1898 Code.

x x x

We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of Sub-section (2) of Section 397. In our opinion it must be taken to be an order of the type filing in the middle course."

x x x

...We feel no difficulty in coming to the conclusion after the consideration, that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2).

If the test laid down by the Supreme Court is applied to this case, it would appear that if the Executive Magistrate would have allowed the petition u/s 145(5) of the Code then the proceeding would have terminated. So the order for continuance of the proceeding after rejecting the plea of the second party members cannot be said to be of interlocutory nature. Even if any doubt is expressed to this proposition conch-don is inescapable that the order of the Executive Magistrate was an order of the moment and fell in the middle course. I would accordingly take the view that the impugned order was not purely interlocutory in nature and the revisional jurisdiction of the learned Sessions Judge u/s 397(2) of the Code was not barred.

7. The next question however, does not present any difficulty. The learned Sessions Judge was right in holding that a party cannot be driven to the civil Court to establish his title over and over again, simply because some other parties repeatedly threaten his possession" It is also well settled position of law chat it the civil Court, the revenue Court or the consolidation authorities have declared the right of a party in respect of disputed lands, the same should be

respected by the Court exercising powers u/s 145 and in case of disturbance, shall bind down the offending party u/s 107 of the Code. The finding of the learned Sessions Judge is that the second party members were found to be the rightful owners in possession of the disputed land both by the civil "court, as well as the revenue Court. Therefore, there was no reason why on each occasion, if their possession is threatened, they should go to the civil Court for a fresh declaration of title, as well as possession. I am, therefore, of the view that on this ground no fault can be found with the impugned order of the learned Sessions Judge.

8. In the result, the criminal revision is without merits and is hereby dismissed.

9. Revision dismissed.