
(1984) 07 OHC CK 0002

In the Orissa High Court

Case No : Miscellaneous Appeal No. 93 of 1978

Narasingha Satpathy and Others

APPELLANT

Vs

Labanya Dibya and Others

RESPONDENT

Date of Decision : 25-07-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2(3), Order 39 Rule 2A, Order 43 Rule 1, 151

Citation : (1984) 58 CLT 454

Hon'ble Judges : P.C. Misra, J

Bench : Single Bench

Advocate : P. Kar, for the Appellant; S.S. Rao, for Y.S.N. Murty, for the Respondent

Final Decision : Allowed

Judgement

P.C. Misra, J.—This is an appeal under Order 43, Rule 1 of the CPC against the order dated 13-2-1978 of the Subordinate Judge, Bhubaneswar, passed in Misc. Case No. 42 of 1977 allowing the prayer under Order 39, Rule 2-A of the Code and directing the property of the Appellants to be kept under attachment for one year and in case of further breach the property so attached to be sold to compensate the Respondents.

2. One Biswanath Satapathy, husband of Respondent No. 1, and father of Respondent Nos. 2 and 3, filed O.S. No. 100 of 1950 in the Court of the Subordinate Judge, Puri, praying for partition of his interest in the suit property. In the said suit, an application under Order 39, Rule 1 read with Section 151 of the CPC (hereafter "the Code") was filed by the Plaintiffs praying for an order of injunction against the Defendants restraining them from cutting and carrying away the paddy crops from the suit land and an ad interim order of injunction was passed on 30-11-1976 to the same effect. The said order is said to have been served on the Defendants on 2-12-1976. Thereafter an application was filed under Order 39, Rule 2-A of the Code alleging violation of the order of injunction

by the Defendants and praying for taking suitable action as provided under law against them. The said application was registered as Misc. Case No. 42 of 1977. The present Appellants in their counter denied the allegation about the cutting and removal of the paddy on 9-12-1976. According to them, on a false report by present Respondent No. 3, some of the present Appellants were arrested on 6-12-1976 and in order to get them released the other Appellants remained busy at the police-station and they could not have cut and removed away the paddy as alleged in the said misc. case. On a consideration of the evidence of both the sides, the learned Subordinate Judge held that the present Appellants had cut and removed the paddy from the disputed land violating the prohibitory order and consequently he allowed the misc. case and directed that the property of the present Appellants shall be kept under attachment for a period of one year from the date of his order and in the event of further breach, the court would sell away sufficient extent of the property so attached to compensate the wrong done to the present Respondents.

3. At the out-set the learned Counsel appearing on behalf of the Appellants has relied upon a decision of this Court in the case of Babulal Parekh Vs. Lachminarayan Swalram and Others, , for the contention that the proceedings under Order 39, Rule 2-A of the Code are of quasi-criminal nature and the order punishing the persons violating the order of injunction should be treated as an order in a criminal case. The aforesaid contention does not appear to me to be a correct approach of the law. The Supreme Court in the case of State of Bihar v. Rani Sonabati Kumari, indicated:

...undoubtedly proceedings under Order 39, Rule 2(3) (corresponding to Order 39, Rule 2-A after the amendment of Code of Civil Procedure) CPC have a punitive aspect as is evident from the contemner being liable to be ordered to be detained in civil prison, they are in substance designed to effect the enforcement of or to execute the order....

Irrespective of whether the proceeding under Order 39, Rule 2-A of the Code is quasi-criminal in nature or essentially a civil proceeding, the present Appellants could not be held guilty for violating the order of injunction unless the allegations made against them are proved to the satisfaction, of the Court. The order of injunction is said to have been violated on 9-12-1976 whereas the application under Order 39, Rule 2-A of the Code was filed on 2-2-1977. No acceptable explanation whatsoever has been furnished explaining the delay in filing the application. The original Plaintiff Biswanath Satapathy admittedly died on 11-12-1976 in a hospital. After his death, the present Respondents were substituted in his place in the trial court. Out of the witnesses examined on behalf of the Petitioners in the court below (the present Respondents) P.W. 2 stated that the paddy crop was cut four days after the death of Banchhanidhi Satpathy. The same is the version of P.Ws. 1 and 2 who were examined on behalf of the present Appellants. Thus, the story that the paddy was cut on 9-12-1976 does not appear to be correct. There is evidence on record to show that the

Appellants who were arrested by the police on 6-12-1976 were released in the night of 8-12-1976. In the context of the circumstances, it is improbable that they got themselves engaged in the cutting of the paddy on 9-12-1976 immediately after their release. There are various discrepancies between the evidence of P.Ws. 1 and 2 for which their evidence does not inspire confidence. P.W. 3 was rightly disbelieved by the learned Subordinate Judge. In the facts and circumstances of the case, the cutting of paddy on 9-12-19/6 does not appear to me to be true.

4. In the result, therefore, the impugned order passed by the learned Subordinate Judge is set aside and the appeal is allowed. The property of the Appellants, if already attached, be released from attachment. There would, however, be no order as to costs.