

(1985) 07 OHC CK 0003
In the Orissa High Court
Case No : Civil Revision No. 532 of 1982

Narayan Panda and Others	Vs	APPELLANT
Mahendra Ram and Others		RESPONDENT

Date of Decision : 26-07-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, 115

Citation : (1985) 60 CLT 266 : (1985) 2 OLR 327

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : Mahadev Mishra and C. Achaary, for the Appellant; S.P. Misra, U.N. Sahoo and G.K. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—In this Civil Revision, plaintiffs are the petitioners against the appellate order arising out of a proceeding under Order 39, Rule 1, Code of Civil Procedure.

2. Title Suit No. 121 of 1980 was filed in the Court of the Munsif, 1st Court, Cuttack, for permanently restraining the defendants from interfering with the possession of the plaintiffs in respect of 18 decimals of Gharbari land in Plot No. 257 under Khata No. 71 of mouza-Bhajimul. Case of the plaintiffs is that the suit land was recorded in the names of their ancestors in the 1930 settlement. Plaintiffs claim to be in possession of the disputed land growing vegetables therein. Plaintiffs' further claim is that on the suit land there are valuable fruit-bearing trees and bamboo clumps. The cause of action for the suit was the threat of the defendants to dispossess the plaintiffs and cut away the trees and bamboo clumps. With the above allegations, the plaintiffs prayed for ad interim injunction against the defendants.

3. Defendants filed their objection to the petition for injunction claiming possession over the suit land for last thirty years. They also claimed that on the

suit land there are fruit-bearing trees and bamboo clumps and that they used to grow seasonal vegetables.

4 There is no dispute that in the 1930 settlement the land was recorded in the names of the ancestors of the plaintiffs. It is not also in dispute that on the disputed land there are bamboo clumps and fruit-bearing trees. The further undisputed fact is that the disputed land is being used for growing seasonal vegetables.

5. Plaintiffs in support of their possession filed the draft record-of-rights prepared by the Assistant Consolidation Officer. Defendants in support of their possession filed the copy of the land register prepared where the forcible possession of the defendants has been recorded. No oral evidence has been adduced or affidavit filed in support of the case of either party.

6. Neither the trial Court nor the appellate Court considered the validity of the land records prepared by the Assistant Consolidation Officer. The appellate Court has not considered the irreparable injury to be caused to the plaintiffs. It has also not considered the question of balance of convenience of the parties. In a suit for permanent injunction where ad interim temporary injunction is sought for, one of the important question to be considered is the effect of temporary injunction where ultimately the suit would be dismissed.

7. In view of the above discussion, this is a fit case where the orders of both the Courts are to be vacated and the matter should be remitted back to the trial Court to consider the question of grant of temporary injunction afresh. Since the matter is being remitted back, the trial Court shall give further opportunity to parties to prove their case by affidavit or otherwise." The trial Court shall take note of the provision of the Orissa Forest Act whereunder there is a statutory prohibition for cutting the fruit-bearing trees.

8. In course of hearing it was brought to my notice that in Civil Revision No. 533 of 1983, further proceeding of the suit has been stayed pending disposal of the revision before the Consolidation Commissioner. By further proceeding it was meant the "hearing of the suit". Filing of written statement or petition for substitution or petition for appointment of receiver or petition for injunction was not intended to be stayed. The main purpose of stay was that two forums simultaneously do not consider, the same issues in the suit. Accordingly, there will be no bar for the trial Court to hear the injunction matter.

9. In the result, the Civil Revision is allowed and the matter is remitted back to the trial Court for fresh enquiry and decision. No costs.