

(2000) 10 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 5927 of 1999

Natabar Parida and Another

APPELLANT

Vs

Bihari Charan Mohanty and Others

RESPONDENT

Date of Decision : 25-10-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 32

Citation : (2000) 2 OLR 636

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

Bench : Single Bench

Advocate : N.C. Pati, A.K. Mohapatra, S. Misra and P.K. Khuntia, for the Appellant; Y. Mohanty, P.C. Biswal, S.K. Beura, B.N. Mohanty 2, S.N. Mishra, M. Jena and S. Jena for OP 1, for the Respondent

Judgement

P.K. Misra, J.—This writ application is directed against an order passed by the executing Court as confirmed by the revisional Court. There is no dispute that there is a decree for permanent injunction in favour of opposite party No. 1. An application was filed under Order 21, Rule 32, CPC (in short, the "C.P.C.") before the executing Court stating that the present petitioners had violated the decree of permanent injunction. The executing Court after finding the present petitioners guilty of the alleged violation directed that the petitioners shall be detained in civil prison for a period of one month and their property shall remain attached for a period of six months. In revision, the said order having been confirmed, the present writ application has been filed.

2. Learned counsel for the petitioners first contended that adequate opportunity of hearing has not been afforded by the executing Court to the present petitioners to adduce evidence and as such the matter may be remanded. Learned counsel for opposite party No. 1, however, stated that the present petitioners had appeared before the executing Court and, therefore, it cannot be said that adequate opportunity had not been afforded. After going through the L.C.R., I am not in a position to come to the conclusion that-adequate

opportunity had not been given and as such, there is no necessity for remanding the matter.

3. Learned counsel for the petitioners then submitted that even assuming that there had been violation, the penalty imposed appears to be grossly disproportionate. The allegation in the petition indicated that the present petitioners had taken away few coconuts which had fallen down on the ground while opposite party No. 1 was plucking coconuts from the tree. It is also found that the present petitioners did not allow the opposite party No. 1 to repair the fence. Having regard to the nature of allegations and the nature of violation, the direction regarding civil imprisonment for a period of one month of the petitioners who are husband and wife and aged about 72 and 61 years respectively appears to be grossly disproportionate.

4. Order 21, Rule 32, C.P.C. provides :

"Rule 32. Decree for specific performance for restitution of conjugal rights or for an injunction -

(1) Where the party against whom a decree for specific performance of a contract, or for restitution of conjugal rights or for an injunction, has been passed, has had an opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under Sub-rule (1) or Sub-rule (2) has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold: and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of six months from the date of the attachment, no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the

Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."

A perusal of Order 21, Rule 32, C.P.C. indicates that detention in civil prison and attachment of property can be in the alternative or simultaneous. In other words, in a given case, the executing Court is free to impose both the punishments simultaneously. However, imposition of both the punishments shall always depend upon the facts and circumstances of each case. Ordinarily, the Court in the first instance should not direct for civil imprisonment unless the violation appears to be very gross. Having regard to this aspect, I am inclined to quash the direction of the executing Court, as confirmed in revision, so far as the direction regarding civil imprisonment is concerned. It appears that the order of attachment has been stayed. "Therefore, it is directed that the property of the petitioners shall remain under attachment for a period of six months. It is made clear that if there is any further violation, it would be open to opposite party No. 1 to file appropriate petition for taking action under Order 21, Rule 32, C.P.C.

5. Subject to the aforesaid observation and direction, the writ application is disposed of. There is no order as to costs of the present petition in this Court.