

(1953) 02 OHC CK 0002

In the Orissa High Court

Case No : Criminal Revision No. 345 of 1952

Panua Bhoi and Others

APPELLANT

Vs

Mahanta Jagannath Ramanuj Das and Others

RESPONDENT

Date of Decision : 26-02-1953

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145
Orissa Tenants Protection Act, 1948 — Section 7(1)

Citation : AIR 1953 Ori 312 : (1953) 19 CLT 226

Hon'ble Judges : Narasimham, J

Bench : Single Bench

Advocate : G.K. Misra, for the Appellant; P. Mohanti, for the Respondent

Judgement

Narasimham, J.—This is a revision petition by the second party against an order u/s 145, Cr. P. C. passed by a first class Magistrate of Puri declaring the first party (opposite party) to be entitled to possession of the disputed property which consists of about 60.67 acres in village Rebatiraman, P. S. Sadar, in the district of Puri. About nine acres of the disputed property consist of paddy lands and the rest are cocoanut gardens, orchards and tanks. The opposite party's case was that the entire property was in their actual possession and that the ancestors of the petitioners were just allowed to reside in the coconut garden and render service to Lord Jagannath on ceremonial occasions. The petitioners however contended that their ancestors reclaimed the lands, laid up cocoanut gardens and orchards and prepared paddy fields which they were holding on bhag basis under the first party. Both sides led evidence ; but the learned Magistrate preferred the evidence of the first party. Apparently, the case was not conducted with proper care and clear evidence about separate possession of the paddy fields as distinct from the evidence about possession of the orchards and tanks was not led. In the judgment also there is no clear analysis of the difference in the nature of possession in respect of the paddy lands and in respect of the remaining portions of the disputed property. So far as orchards and tanks are concerned, there is no reason to disturb the finding of the learned Magistrate in favour of the first party.

2. In respect of the paddy fields, however, further complication has arisen chiefly because the dispute between the parties has already been taken up before the Revenue authorities under the provisions of the Orissa Tenants Protection Act, 1948. I am told that proceedings under the O. T. P. Act are now pending before the Revenue Officers. A decision in a proceeding u/s 145, Cr. P. C. is obviously of an interim nature and it is subject to any Subsequent decision that may be given by a competent Court. In a dispute of this type between persons who claim to be bhag chasis on the one hand and the landlord on the other as regards their respective right of possession over the property the competent Court is the Revenue Court under the provisions of the O. T. P. Act, 1948. It is that Court which is conferred exclusive jurisdiction to decide whether the bhag chasis were in actual possession of the paddy fields on the 1st day of September, 1947 and whether they were entitled to be restored to possession if evicted after that date by the landlord (see Section 7(1) (a)). In the proceeding u/s 145, Cr. P. C. the learned Magistrate was concerned only with the limited question as to whether on the date of the commencement of the proceeding (28-3-51) or within two months before that date either party was in actual possession of the disputed plots. Even after a decision in a proceeding u/s 145, Cr. P. C. is given, if the Revenue Officer finds that the tenant is entitled to protection under the O. T. P. Act by virtue of his having been in possession on the 1st day of September 1947, he has jurisdiction to evict the landlord and restore possession to the tenant. Under these circumstances when a final determination of the dispute between the parties has already been taken up before the competent Revenue Court under the provisions of a special law dealing with the subject there seems no point in allowing the order u/s 145, Cr. P. C. to stand. This view, however, is limited to those properties which are the subject-matter of the proceeding under the O. T. P. Act and cannot be applied to the cocoanut gardens and tanks which, I am told, are not included in that proceeding.

3. I would, therefore, set aside the order of the learned Magistrate u/s 145, Cr. P. C. in respect of about nine acres of paddy lands which are the subject-matter of the present proceeding and leave it to the parties to prosecute their litigation before the Revenue Officer under the O. T. P. Act. I would, however, confirm the order of the Magistrate in respect of the cocoanut gardens, orchards and tanks. The revision petition is disposed of accordingly.