

(1973) 11 OHC CK 0013

In the Orissa High Court

Case No : Criminal Revision No. 27 of 1973

Parama Nanda Mahanto and Others

APPELLANT

Vs

Siba Ch. Mahanto and Others

RESPONDENT

Date of Decision : 20-11-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1973) 39 CLT 1338

Hon'ble Judges : K.B. Panda, J

Bench : Single Bench

Advocate : P. Palit, J.N. Patnaik and S.K. Biswal, for the Appellant; L. Rath, U.K. Nanda and A.K. Misra, for the Respondent

Final Decision : Allowed

Judgement

K.B. Panda, J.—The Petitioners were first party in a 145 proceeding (Criminal Misc. Case No. 70 of 1972) which the Sub-Divisional Officer Champua dropped on 28-12-1972 mainly on the ground that there was no apprehension of breach of peace. The dispute was over Gopiballavpur Bund having an area of A. 5.20 decimals. The second party were members of Ukhunda Grama Panchayat.

The Petitioners? (first party) case is that though the tank stands recorded in the name of Sarkar they were in possession of it for the last thirty years. They had reclaimed the bund, using its water for irrigating their lands through a channel and also they were rearing and catching fish. They denied the possession of the second party at any time. Since the second party attempted to catch fish in the year 1971 in the month of Falguna there was trouble over the same as the first party drove away the members of the second party. Thereafter the first party file of a 144, Code of Criminal Procedure proceeding which was sent for enquiry and report to the Officer-in-Charge, Baria P.S. and on his report it was converted to a proceeding u/s 145, Code of Criminal Procedure.

3. The first party members filed five affidavits of witnesses in support of their

claim. They also filed the receipts regarding sale of fish in support of their possession. On behalf of Ukhunda Grama Panchayat the Sarpanch appeared but did not file any written statement or any affidavit. In fact the second party members did not take any step since 15-9-1972 and the case proceeded ex parte against them. Finally the learned trying Court dropped the proceeding on 28-12-1972 mainly on the ground, that there is no likelihood of breach of peace. The other grounds for which he disbelieved the evidence adduced by the first party are that the affidavit witnesses are interested and the receipts filed do not inspire confidence. The learned lower Court appears to have attached great importance to a permission sought by the first party in 1939-40 renovating the Bund. The learned lower Court's finding is that since the tank stands recorded in the name of Government and since the first party members have sought permission in 1939-40 as admitted by the first party members, that cuts at the root of the first party's case.

4. The learned Court's approach is obviously wrong. In a 145 Code of Criminal Procedure proceeding he was to determine the possession of any party at the relevant time. The claim for right to possess is different from the actual fact of possession. If the second party, Panchayat was in possession, it was upto it to establish its claim. But it has not done so. There is no report from the Police that there was no likelihood of breach of peace justifying dropping of the proceeding. Be that as it may, the second party having gone exparte it was a case of evidence as against no evidence, and therefore ,the possession of the first party should have been declared. Since the proceeding has been dropped I would quash that order and remand the case for disposal according to the provisions of law ascertaining from the police if there is any likelihood of breach of peace at present or not. While disposing of this matter the learned lower Court would do well in following the principles laid down by this Court in the case of Raghunath Behera and Others Vs. Purna Chandra Mahanta and Others, .

The partition is allowed and case is remanded.