
(1997) 06 OHC CK 0023

In the Orissa High Court

Case No : Criminal Revision No. 553 of 1993

Purna Chandra Rana

APPELLANT

Vs

Narayan Rana and Others

RESPONDENT

Date of Decision : 19-06-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1997) 2 OLR 51

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

Bench : Single Bench

Advocate : Akshaya Kumar Sahoo and S.K. Das, for the Appellant; None, for the Respondent

Judgement

P.K. Misra, J.—The member of the first party in a proceeding u/s 145 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has filed this revision challenging the legality of the order passed by the Sub-Divisional Magistrate, Sambalpur, declaring the possession of the second party in respect of the disputed property measuring Ac. 3.61 decimals of land as described in the schedule of the impugned order.

2. It is not necessary to refer in detail the case of either party as I consider it to be a fit case where the matter would be remanded to the court of the Magistrate for fresh disposal in accordance with law. The Magistrate has relied upon the order passed, by the Deputy Director, the appellate authority, in a consolidation proceeding. It appears that in the consolidation proceeding the land has been jointly recorded in the names of Purna Chandra Rana, member of the first party and Narayan Rana, member of the second party. From such recording, the Magistrate could not have come to the conclusion about the exclusive possession of the second party members. Moreover, as submitted by the learned counsel for the petitioner in this case, revisions are pending before the revisional authorities under the Orissa Consolidation of Holdings and Prevention of Fragmentation of Land Act. The Magistrate has not referred to the evidence, oral and documentary,

adduced by either side and has come to the conclusion regarding possession of the second party by merely referring to the order of the appellate authority. When other witnesses had been examined and documentary evidence had been adduced it was the duty of the Magistrate to refer to all the materials on record before coming to a particular finding. Moreover, as already indicated, in the consolidation proceedings the disputed land appears to have been jointly recorded. It is apparent that the Magistrate has not applied his judicial mind to all the materials on record and has arrived at a conclusion which cannot be sustained in law. In the interest of justice, I therefore, feel that the order passed by the Magistrate should be quashed and the matter should be remanded to the Magistrate for fresh disposal. The Magistrate should call upon the parties to produce relevant records relating to consolidation revision and if the matter has been finally decided by the consolidation revisional authorities, the Magistrate should keep in mind the findings recorded therein. If, however, the consolidation revisions are still pending, the Magistrate should consider the desirability of continuing the proceeding. If the Magistrate finds that apprehension of breach of peace is still continuing he should keep the land under attachment and put the same to annual auction between the parties. If however, the Magistrate comes to a conclusion that apprehension of breach of peace has ceased, he should drop the proceeding.

3. Subject to the aforesaid observations, the Criminal Revision is disposed of.