

(1956) 04 OHC CK 0007

In the Orissa High Court

Case No : Criminal Revision No. 333 of 1955

Sankhudia Singh and Others

APPELLANT

Vs

Gadadhar Jena and Others

RESPONDENT

Date of Decision : 26-04-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 140, 145
Orissa Tenants Protection Act, 1948 — Section 7(1)

Citation : (1956) 22 CLT 273

Hon'ble Judges : Narasimham, C.J

Bench : Single Bench

Advocate : G. Rath, for the Appellant; P. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

Narasimham, C.J.—This is a revision petition against an order u/s 145 Code of Criminal Procedure passed by the Sub-divisional Magistrate, Kaptipada against the Petitioners who were the second party before him. The proceeding was drawn up on the 14th December 1954 in respect of 16 Mans and 21 gunths of land in village Bhanupur, P.S. Khunta. The Petitioners set up the plea that they were bhagchasis of separate parcels of the disputed land and that these were in their cultivating possession for the last 12 or 13 years. They further alleged in their written statement that separate Bhagchasis cases under the Orissa Tenants Protection Act had been instituted by them against the members of the first party which were declared in their favour, both by the trial court and the appellate court, and also by the Court of Revision. On scrutinising the records of the case I find that the Sub-divisional Officer himself, on being satisfied that the disputed properties were identical with the properties which were the subject-matter of the previous proceeding under the Orissa Tenants' Protection Act, wrote a letter to the District Magistrate on the 18th February 1955 suggesting the dropping of the criminal proceeding in view of the decision in the Bhagchasis case in favour of the second party. The District Magistrate in his reply dated 5th

March 1955 while agreeing with the Subdivisional Magistrate that the proceeding may be dropped added that such action may be taken if he was satisfied that there would be no longer any breach of peace. Apparently in view of this guarded permission given by the District Magistrate, the Sub-divisional Magistrate thought that he should not drop the proceeding u/s 145 Code of Criminal Procedure as his apprehensions about breach of peace had not ceased. The proceeding had been drawn up on the 14th December 1914. He then heard the evidence of both sides and declared the first party (opposite party) to be in possession.

2. It has been held by this Court in 19 C.L.T. 226 that a final order u/s 145 Code of Criminal Procedure is subject to an order of the competent Revenue Officer u/s 7(1)(a) of the Orissa Tenants Protection Act, 1948 and that once such an order is passed by the Revenue authority the order u/s 140 Code of Criminal Procedure should give way to the same. The present case however is of a converse nature. The main point urged by Mr. Rath on behalf of the Petitioners was that once an order in; favour of the Bhagachasis is passed by the competent Revenue authority in a proceeding under the Orissa Tenants' Protection Act, the Subdivisional Magistrate should not have initiated or continued the proceeding u/s 145 Code of Criminal Procedure and decided in favour of the unsuccessful party in the Orissa Tenants Protection Act Case. The judgment of the appellate Revenue Officer in the Orissa Tenants Protection Act case was passed in December 1953. Against this judgment, I am informed, a revision was filed before the Board of Revenue and that revision was dismissed on the 12th October 1954. As already pointed out, the proceeding u/s 145 Code of Criminal Procedure was initiated on the 14th December 1954, sometime after the final disposal of the Bhagachasis case. Doubtless, notwithstanding the decision in the Orissa Tenants Protection Act case in favour of the Bhagchasis it is open to the landlord to show that subsequent to that decision he successfully ousted the tenants and regained possession on the date of commencement of the proceeding u/s 145. But on the question of belief or disbelief of the landlord's case, it is obvious that no Court would ordinarily accept his statement that after the success of the Bhagchassis in the Orissa Tenants Protection Act case he could successfully dispossess them. Hence, though it may not be correct to say-that the Sub-divisional Magistrate had no jurisdiction whatsoever to start a proceeding u/s 145 Code of Criminal Procedure in respect of the very same properties which were the subject-matter of the previous proceeding under the Orissa Tenants Protection Act, yet, ill appreciating the evidence of possession adduced by the rival parties he cannot ignore the previous decision in that proceeding under the Orissa Tenants Protection Act, especially when the interval between the two as not great.

3. The learned Magistrate was aware of this difficulty, but he attempted to solve it by saying that no clear evidence had been adduced by the Petitioners to show that the properties in dispute in the proceeding u/s 145 Code of Criminal Procedure were identical with the properties in dispute in the previous proceeding under the Orissa Tenants Protection Act. Here however he committed

an error of record. In the written statement the Petitioners had clearly alleged that the properties in the two proceedings were identical. Similarly, during the cross-examination of the witnesses of the first party there was a reference to the previous Bhagchassis case, and in the evidence of witness No. 2 for the second party, Gora Singh, this point was proved beyond any doubt, The cross-examination of Gora Singh was directed more to show that only one of the three members of the opposite party was a party in the Bhagchassis case than to show that the properties in dispute in the two cases were not the same. Moreover, another witness for the second party, Nanda Singh has stated categorically in his examination-in-chief that the properties in dispute in the two proceedings were the same. The lower Court was therefore not justified in attempting to ignore the decision of the Revenue Officer in the case under the Orissa Tenants Protection Act on the ground that it was not proved that the properties in the two cases were identical.

4. It is true that in the case under the Orissa Tenants Protection Act, all the members of the first party, namely the opposite party were not parties and that Gora Singh was the only party there, but the other two persons are none else than the brothers of Gora Singh. Apart from the question of res judicata which does not really arise in decisions of this type, it is highly improbable that tenants whose claims to be bhagchassis in respect of the disputed lands have been upheld by the Revenue Officers would have peacefully surrendered possession to the landlord even after the successful termination of the Revenue case in their favour. It was not the case of the landlord (opposite party) that after the success of the tenants in the Bhagchassis case the landlord succeeded in dispossessing them. On the other hand, they stated that they were all along in possession and this story could hardly be believed in view of the decision of the Revenue Officers and the positive testimony adduced by the second party.

5. For the aforesaid reasons I am satisfied that the finding of the Sub-divisional Magistrate regarding the possession of the first party (opposite party) is not sustainable on the evidence on record and that he has failed to give proper weight to the previous decision in the case under the Orissa Tenants Protection Act. I would therefore set aside his order, declare the disputed properties to be in the possession of the Petitioners (second party) and forbid disturbance of their possession until they are evicted in-Court course of law. If the attached paddy has not yet been delivered to the first party, it should be delivered to the Petitioners (second party). Revision allowed.