

(2000) 11 OHC CK 0015
In the Orissa High Court
Case No : Criminal Revision No. 510 of 2000

Sarat Parida and Others

APPELLANT

Vs

Srimati Bliha Kunja Bihari Das

RESPONDENT

Date of Decision : 21-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2001) 20 OCR 397

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

Bench : Single Bench

Advocate : M.N. Das and P.K. Singh, for the Appellant; B.H. Mohanty, R.K. Nayak, D.P. Mohanty and T.K. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—The Second Party Members in Criminal Misc. Case No. 130 of 1995 of the Court of Shri A.K. Pattnaik, Executive Magistrate, Dhenkanal, have filed this Revision challenging the filed order u/s 145, Code of Criminal Procedure dated 31.8.2000 in which learned Executive Magistrate has declared the possession in favour of the First Party members. The First Party is the Opposite Party in this Revision.

2. At the outset it may be noted that this is the second journey of the Petitioners in challenging the order u/s 145, Code of Criminal Procedure of the said Executive Magistrate in as much as on 25.6.1997 learned Executive Magistrate passed order declaring possession in favour of the First Party. That order was challenged by the present Petitioners, vide Criminal Revision No. 331 of 1997. This Court No. 21.4.2000 disposed of that Revision by setting aside the said order of the Executive Magistrate and remanding the case with a direction to the Executive Magistrate to re-consider the oral and documentary evidence adduced by the parties on the grounds that learned Executive Magistrate had not taken into consideration the documentary evidence relied upon by the parties and based his finding only on the basis of oral evidence. After remand, as it appears

from the impugned order, learned Magistrate has taken note of both oral and documentary evidence adduced by the parties and thereafter has recorded his findings declaring the possession in favour of the First Party/Opp. Party.

3. In the aforesaid proceeding u/s 145, Code of Criminal Procedure the subject matter of dispute is undisputedly a piece of land measuring Ac. 0.03 decimals. According to the preliminary order, the disputed land is vide Hal Plot No. 144/396 of Holding No. 19 in Mouza Natima under Gandia Police Station. The case of the First Party is that the disputed land corresponds to Sabik Plot No. 12 originally belonging to Saita Behera and that was purchased vide a registered sale deed for extension of the "Latashrama" premises and thereafter all throughout it is in possession of the said Ashram and that dispute arose when the Ashram Management laid, foundation for construction of five rooms. The specific case of the Second Party is that the disputed case land is not a part of Hal Plot No. 14/396 nor it corresponds to Sabik Plot No. 12 but is a part of Sabik Plot No. 39 corresponding to Hal Plot No. 13/126 and that, with respect to the disputed land, i.e., Plot No. 39 there was a compromise decree in Title Suit No. 5 of 1960 in the Court of Sub-judge, Dhenkanal on 10.4.1972, and on the basis of that compromise the second party members became the absolute owner of Plot No. 39 and continue to remain in possession thereof. Their further case is that at the time of settlement, wrongly the said plot was recorded as Plot No. 114/396 and the note of possession was recorded in favour of the second party members, but the Commissioner of Land Records passed order to delete the note of possession, and that order being illegal, is not operative to take away the effect of the note of possession. Both the parties laid oral and documentary evidence and after taking note of such evidence, learned Magistrate also tried to ascertain as to whether the disputed case land is vide Plot No. 14/396 corresponding to Sabik Plot No. 12 or it is Hal Plot No. 13/126 corresponding to Sabik Plot No. 39. On super-imposition of the village maps of the Sabik and Hal Settlements he found that the disputed case land is vide plot No. 114/396 corresponding to Sabik plot No. 12. Thus, keeping in view the evidence on record, he declared possession in favour of the First Party members.

4. Mr. Madhabananda Das, learned Counsel for the Petitioners, advanced. a threadbare argument criticising the impugned judgment of the learned Magistrate on various grounds, viz.

(i) learned Executive Magistrate did not follow the instruction in the order of remand for appreciation of both oral and documentary evidence and passed the impugned order after merely referring to such evidence;

(ii) learned Magistrate has gone wrong in making super-imposition behind the back of the parties and taking a decision as to what is the plot number of the disputed land and, therefore, such conclusion derived by him is in violation of the principle of natural justice as well as illegal and inadmissible;

(iii) the order of the Commissioner of Land Records in deleting the note of

possession on the basis of an invalid circular issued by the Board of Revenue being contrary to the provision in Survey and Settlement Rules, is illegal and such orders of the Commissioner should be regarded as inoperative and, therefore, the finding on possession in favour of the First Party being mostly based on that document, the said finding is liable to be set aside;

(iv) the disputed property being the property retained by the second party members on the basis of a compromise decree in the Court of Sub-Judge, Dhenkanal, learned Magistrate should not have ignored that evidence based on Civil Court decree and should not have disallowed the claim of possession of the second party members. Mr. Das relied on several decisions in support of the aforesaid contentions, but a note of such citations is not necessary because) keeping in view the evidence on record the aforesaid legal points raised by the Petitioners are found not to be worth considering.

5. Mr. Bhaktahari Mohanty, learned Counsel appearing for the First Party/Opp. Party, on the other hand, argued that the claim of the first party for title and possession is based on the assertion that the disputed case land is vide plot No. 114/396 appertaining to Sabik Plot No. 12. That plot was never a subject matter of the proceeding or part of the compromise decree in the above said civil proceeding. He further argued that evidence of the Second Party No. 1 as witness No. 5 for the Second Party clinches the issue that the second party members have no claim of right or possession over the disputed case land. He also argued that the decision of the Commissioner of Land Records relating to deleting the note of possession was not on the ground of a Circular being issued by the Board of Revenue which admittedly run contrary to Rule 21 of the Survey and Settlement Rules, but the deletion of note of possession was mainly because there was confusion relating to whether Sabik Plot No. 12 or 39 corresponds to the disputed Hal Plot. In that respect the report of the Tahasildar being clear and unambiguous, which runs concurrent to the claim of the first party member, learned Commissioner passed the said order deleting the note of possession and incidentally he referred to the Circular of the Board. He further stated that in the meantime the 2nd party/petitioners have already filed a Civil Suit relating to the disputed case land. That part of his argument was not disputed by learned Counsel for the Petitioners. However, Mr. Mohanty fairly stated that no order for appointment of receiver or injunction has been passed by the Civil Court;

6. After hearing the argument at length and perusing the oral and documentary evidence in detail, this Court finds that the second party No. 1, Sarat Parida as Witness No. 5 from his side, has clearly deposed in the cross-examination portion that he has no claim of any manner over Plot No. 114/396 or the corresponding Sabik Plot; No. 12. He has insisted that the disputed case land is a part of Sabik Plot No. 39. It thus appears that the Petitioners claim over the case law is on the assumption that the disputed case land is a part of Sabik Plot No. 39. No evidence worth the name was adduced to prove in proper manner that the disputed case land appertains to Sabik Plot No. 39 or that it is not a part of Sabik

Plot No. 12. Be that as it may, possession of the first party has been declared over Plot No. 114/396 of Khata No. 19. Sabik Plot No. 39 corresponding to Hal Plot No. 13/126 and that is not the subject matter of dispute in the proceeding u/s 145, Code of Criminal Procedure Therefore, the second party members cannot have any objection in view of the evidence of Sarat Parida (D.W. No. 5) to declare the possession of the first party over Ac. 0;93 decimals of land belonging to Hal Plot No. 114/396, when admittedly lands appertaining to that plot was never a subject matter of dispute in any civil proceeding in which the second party members were a party. The super-imposition done by learned Executive Magistrate is undoubtedly improper having been done behind the back of the parties, but even if that part of finding shall be discarded, then also the evidence on record cannot but lead to one conclusion that the first party members have proved their possession over plot No. 114/396 which the second party has not claimed in view of the evidence of D.W. No. 5. Under such circumstances, this Court does not feel it necessary to make a further discussion in detail of the other evidence on record though the same has been perused for the purpose of ascertaining the correctness of the impugned order. In that connection it may be noted that most of the documents relied upon by the 2nd party are relating to Sabik Plot No. 39. As noted above, such evidence is of no relevance when that plot is not the subject of dispute and when no evidence worth the name has been adduced to co-relate the disputed case land and Sabik Plot No. 39. In his order the Commissioner, Land Records, as rightly argued by the 1st party, based his order on the basis of the report of the Tahasildar and, to pass the order for deleting the note of possession, referred to the concerned Circular of the Board which undoubtedly is inoperative being contrary to the provision in the Survey and Settlement Rules. For the sake of discussion, even if the said document shall be excluded from consideration, then at best it leads to the circumstance that note of possession was recorded in favour of the 1st party with respect to the disputed case land. Such entry in the R.O.R. is not conclusive proof of the remarks noted: Apart from that, the presumption arising out of such entry has been rebutted by bringing admission from the mouth of Petitioner No. 1, Sarat Parida (O.P.W. 5) that the 2nd party members have no claim over Sabik Plot No. 12 corresponding to Hal Plot No. 114/396.

7. For the reasons indicated above, this Court does not find any reason to interfere with the impugned order in which possession of the first party has been declared. Hence, the Criminal Revision is dismissed.