
(2003) 03 OHC CK 0039
In the Orissa High Court
Case No : C.R.P. No. 108 of 2002

Smt. Kamini Bala Patra

APPELLANT

Vs

Gourahari Patra and Others

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115

Citation : AIR 2003 Ori 161 : (2003) 1 OLR 500

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

Bench : Single Bench

Advocate : B. Baugh, for the Appellant; N.N. Mohapatra, B.K. Das and S.S. Ghosh, for the Respondent

Final Decision : Allowed

Judgement

P.K. Tripathy, J.—Heard.

2. This civil revision is directed against judgment delivered on 12-8-2002 by learned Ad hoc Addl. District Judge (Fast Track Court), Balasore in Misc. Appeal No. 107 of 2000.

3. After service of notice, the opposite party members have not appeared to contest the case.

4. Petitioner is the plaintiff in Title Suit No. 758 of 2000-I of the Court of Civil Judge (Senior Division). Balasore. The disputed property, as per the description in Schedule A of the plaint, is Plot No. 3105 under M. S. Khata No. 58 corresponding to Sabik Plot No. 2051 under Sabik Khata No. 468, measuring an area of Ac. O. 68 decimals. Plaintiff has claimed that property on the basis of three registered sale deeds and she has stated that she has purchased that land out of her "Stridhan" property, and the defendants who are her in-laws (being the brother and other agents of her husband) have unreasonably started disputing to her title and possession. Accordingly, she filed the suit, inter alia, for the relief of permanent injunction. She filed an application under Order 39, Rules

1 and 2 of the Code of Civil Procedure, 1908 (in short, "the Code"), which was registered as Misc. Case No. 468 of 2000. Opposite party members, on receipt of notice, appeared and contested that Misc. Case. From the show cause filed by them, it appears that they claim the property on the basis of an oral agreement for sale. According to the defendants, when the plaintiffs husband was ill and the plaintiff was in need of money for the treatment of her husband and for completion of the half constructed house, they provided Rs. 52,000/- (fifty two thousand), which was the consideration money fixed for transfer of the suit land. According to the defendants, such transaction took place as back as in the year 1989 but the sale deeds could not be obtained from the plaintiff in the meantime because she was busy in the treatment of her husband.

5. Along with the plaint, plaintiffs filed certified copy of the Record of Rights and the certified copy of the registered sale deeds besides a few rent-receipts and order passed on 11-7-2000 in a proceeding u/s 144 of the Code of Criminal Procedure (in short, "Cr. P. C."). On the other hand opposite party members filed certified copy of the report of the police in the aforesaid proceeding u/s 144, Cr. P. C. and few Municipal receipts, all of which have been granted in favour of the plaintiff. In one of those Municipal receipts dated 26-2-1999 it has been noted that defendant No. 1, i.e., brother-in-law of the plaintiff deposited that amount of Municipal tax.

6. On appreciation of facts and documents, trial Court granted temporary injunction in favour of the plaintiff and enjoined the defendants not to interfere with her possession of the suit land. The appellate Court, on perusal of the aforesaid documents, found the report of the police officer more precious and credible than the revenue records and the sale deeds and on the basis of that, vacated that order of injunction on the ground that the (above noted) documents filed by the defendants prima facie prove their possession.

7. Learned counsel for the petitioner argues that learned Addl. District Judge forgetting all norms provided for appreciating evidence, employed conjecture to record a finding of possession in favour of the defendants, and that being illegal the impugned order is liable to be set aside and the order of the Civil Judge should be restored to file.

8. The above noted argument advanced by the petitioner needs careful consideration, because a wrong factual finding of the trial or the appellate Court per se does not entitle the revisional Court to interfere with the factual finding unless the revisional Court finds that such erroneous factual finding comes within the arena of jurisdictional error as enumerated in Clause (C) of Sub-rule (1) in Section 115 of the Code. It be noted here that the Courts below having the jurisdiction to consider the dispute relating to grant or refusal of temporary injunction, in that context if they or any of them while acting in exercise of such jurisdiction passed the order which is illegal or suffers from material irregularity, then only the revisional Court shall interfere with such factual finding. Therefore, a factual finding which is not supported by evidence on record or contrary to the

evidence on record, that is to say, a finding infested with perversity and similarly a finding based on conjecture can be regarded as a finding recorded either illegally or with material irregularity.

9. As already noted, the trial Court while appreciating the evidence on record, found a prima facie case of title and possession in favour of the plaintiff, because she has purchased the land, the same stands recorded in her name and rents are being paid by her, The appellate Court on the other hand without finding any error in the aforesaid finding relating to the right, title and interest of the plaintiff, recorded the finding that the factum of possession is prima facie available in favour of the defendants inasmuch as they possess the original sale deeds which is an indication of the oral agreement for sale and the bunch of rent receipts produced by them from the Municipal authority indicate that they are in possession of the property. On perusal of the Municipal receipts it is seen that the Municipal tax receipts have been granted in favour of the plaintiff for the entire period and only in one receipt, which was granted on 26-2-1999, name of defendant No. 1 has been noted as the person who deposited the money on behalf of the plaintiff. When in other Municipal tax receipts including the receipt granted on 2-3-2000 it is not indicated that anybody else has deposited the tax, that one receipt prima facie does not rebut to the factum of possession as against the plaintiff. In the proceeding u/s 144, Cr. P. C. (Misc. Case No. 36 of 2000 of the Court of Executive Magistrate, Jaleswar) on 11-7-2000 a prohibitory order was passed by learned Executive Magistrate restraining the second party-members, i.e., the defendants to enter upon the case land, i.e., the suit land. There is nothing on record to show or suggest that such prohibitory order was rescinded or altered or vacated within a period of two months. Therefore, on the face of that order of the Executive Magistrate the report dated 16-8-2000 of the O.I.C. of Raibania Police Station reporting about the factum of possession in favour of the defendants appears to be not acceptable. In other words, when the evidence on record was thoroughly and systematically considered by the trial Court to record his satisfaction regarding existence of prima facie case, factum of possession in favour of the plaintiff and the invasion by the defendants satisfying to the requirement of balance of convenience and irreparable loss in favour of the plaintiff, the appellate Court failed to exercise the jurisdiction so vested in him to analyse and appreciate the evidence on record, and giving undue importance to documents of no significance (as indicated above) for vacating the order of injunction. The factum of possession in favour of the defendants recorded by him is not supported by evidence on record. Thus, that finding suffers from perversity. Hence, the impugned judgment of the appellate Court is set aside and the Civil Revision is allowed. In the result, the order of temporary injunction granted by learned Civil Judge (Sr. Division), Balasore is restored to file.

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