

(1975) 12 OHC CK 0002
In the Orissa High Court
Case No : Second Appeal No. 354 of 1972

Subarna Besoyani and Others

APPELLANT

Vs

Khadika Bisoyani and Others

RESPONDENT

Date of Decision : 16-12-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(6)

Citation : (1976) 42 CLT 518

Hon'ble Judges : R.N. Misra, J

Bench : Single Bench

Advocate : H.G Panda, for the Appellant; A.K. Padhi and Mira Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, J.—Defendants in a suit for title and recovery of possession are in appeal against the reversing judgment and decree of the learned district Judge of Ganjarn.

2. The disputed property is 1.82 acres in extent in survey No. 670 and is a mango tope. Plaintiffs claimed that their ancestors were in possession of about 40 acres of raiyate land including the tope. The reminder of San Khemundi within whose estate this property was located being satisfied with the services rendered by Plaintiffs' ancestors conferred on them the title of Sardar Ranjit and granted the malevaram interest in these lands as inam. Subsequently the lands were resumed and assessed to rent. In 1950, the Record-of-Rights were finally prepared and the lands were recorded in the name of Lakshman, father of Plaintiffs 2 to 7, and some others of their branch. When Defendants threatened to dispossess them, a proceeding u/s 145 of the Code of Criminal Procedure was initiated which terminated against the Plaintiffs. Plaintiffs, therefore, filed the suit on 15-10-1966.

3. Defendants took the stand that the disputed property had never been granted

as Sardari inam to Plaintiffs' ancestors. On the other hand, it was claimed that it was a part of their Palkali inam. The record-of-rights it is asserted, is erroneous and Plaintiffs have neither title nor possession over the disputed property.

4. The trial Court found that the disputed property was not a part of Sardari inam as alleged by the Plaintiffs and therefore, had never been granted to Plaintiffs' ancestors. The claim of possession of the Plaintiffs was also negated. Accordingly the suit was dismissed.

5. Plaintiffs appealed to the lower appellate Court. The learned District Judge came to find that, the trial Court had discarded the claim of title of both sides and had not accepted also that any of these properties were in possession as claimed; yet without acting on the presumption of correctness of the record-of-rights and the overall picture of the matter, the suit had been dismissed. On a re-assessment of the evidence documentary and oral - the learned District Judge has vacated the decree of the trial Court and accepted the claim laid by the Plaintiffs. This reversing decree is assailed before this Court.

6. Admittedly parties are against having come from the same family. Their lands are also located in adjacent areas. Neither party has produced a Grant in respect of the disputed property on which claim of title could be found. Both parties have produced rent receipts. Ext. 4 series as found by the lower appellate Court are for the disputed property. Similarly Ext. D series refer to the Palkali inam. The trial Court allowed the Defendants to make capital of the description of the property as Paikali Jagir. What impressed the trial Court was that the Plaintiffs' branch (which was the senior out of the two) held the Sardari Grant while the Defendants' held the Paikali Grant, on the footing that ancestors of Plaintiffs were rendering Sardar service while ancestors of Defendants were rendering Paik service. The learned Appellate Judge on an examination of the facts placed by the parties before the Court has come to hold that no significance can be attached to the description of Sardari of Paikali and, therefore, the description as Paikali does not supply any advantage to the Defendants. Though Mr. Panda for the Appellants reiterates the same contention before me as was advanced by the Defendants and accepted by the trial Court on this score, I do not find any scope to take a different view from what has been accepted in the lower appellate Court. It would thus follow that both Ext. 4 series as also Ext. D series relate to Paikali grant.

7. As early as 1950, the record-of-rights were finally published and in the record (Ext. 2), the disputed property has been shown to be in the possession of Lakshman, father of Plaintiffs 2 to 7 and Dandia, Suma and Budhia. These three persons admittedly belonged to the Plaintiffs' branch. The lower appellate Court has as a fact found that Defendants had contemporaneous notice of this record and their story that taking advantage of the absence of the senior members of the Defendants' branch, Plaintiffs had manipulated the record has been discarded. The learned Appellate Judge has fallen back to the presumption attached to the correctness of the entry in the record-of-rights and found that in

1950 Plaintiffs were taken to be in possession of the property. It is not the case of the Defendants that though Plaintiffs were in possession in 1950, Defendants obtained possession subsequently. The dispute between the parties is on the footing that the property was included in the Grant of one party or the other.

8. Mr. Panda for the Defendants-Appellants places reliance on a decision of the Privy Council in the case of *Dinomoni Chowdhrani v. Brojo Mohini Chodhrani* ILR 29 Cal. 187, where it was indicated that though an order for possession under the Code of Criminal Procedure centers no title, yet the person in possession can only be evicted by a person who can prove a better right to the possession himself. Where, therefore, the Plaintiffs sued for possession of certain lands of which the Defendant had been by an order u/s 145 of the Code of Criminal Procedure declared to be in possession, the onus was on the Plaintiffs to prove title to the land. On the basis of this authority, Mr. Panda contends that it was incumbent on the Plaintiffs to establish their title and nothing short of it entitled them to a decree. The effect of a final order in a proceeding u/s 145 of the Code of Criminal Procedure has been authoritatively laid down by the Supreme Court in the case of *Bhinka and Others Vs. Charan Singh*, . In fact, the Supreme Court referred to the same decision of the Judicial Committee and quoted a small portion of it with approval. The Supreme Court observed:

This leads us to the consideration of the legal effect of the order made by the Magistrate u/s 145 of the Code of Criminal Procedure. u/s 145(6) of the Code, a Magistrate is authorized to issue an order declaring a party to be entitled to possession of a land until evicted therefrom in due course of law. The Magistrate does not purport to decide a party's title or right to possession of the land but expressly reserves that question to be decided in due course of law. The foundation of his jurisdiction is an apprehension of the breach of the peace, and, with that object, he makes a temporary order irrespective of the rights of the parties, which will have to be agitated and disposed of in the manner provided by law. The life of the said order is coterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order of eviction it displaces the order of the Criminal Court....

Law is now settled that on the basis of previous possession, a final order in a proceeding u/s 145 of the Code of Criminal Procedure can be reversed by a Civil Court on the principle accepted in the decision of this Court in the cases of *Gadadhar Sahu v. Karsanbasta Patel and Ors.* ILR 1963 Cutt 482 and *Duana Moliko and Another Vs. Bhagabat Biso and Others*, .

9. The learned Appellate Judge in my view has rightly relied upon the presumption of correctness of the record-or-rights and has come to the conclusion that the same has not been rebutted. The presumption of correctness is a rebuttable one; but where the Defendant fails to rebut the presumption, Plaintiff is entitled to succeed on its basis. Whether the presumption has been rebutted or not is a question of fact as has been authoritatively laid down by a series of judicial pronouncements. The learned Appellate Judge having found that

the Defendants have failed to rebut the presumption was, therefore, entitled to give a decree to the Plaintiffs.

10. There is no merit in the second appeal and it must accordingly be dismissed. Parties are directed to bear their own costs in this appeal.