

(2000) 11 OHC CK 0037

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 1043 of 1999

Upendra Mohanta and Others

APPELLANT

Vs

Saradha Mohanta and Others

RESPONDENT

Date of Decision : 30-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 397, 397(3), 482

Citation : (2001) CriLJ 763

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

Bench : Single Bench

Advocate : P.Ch. Mohanty, D.F. Mohanty, N. Behera and R.R. Patra, for the Appellant; A.R. Acharya, for the Respondent

Final Decision : Dismissed

Judgement

1. In this application u/s 482, Cr.P.C. petitioners challenge the correctness and legality of the order of the Courts below i.e., Executive Magistrate, Keonjhar in Criminal Misc. Case No. 337 of 1994 vide order dated 22-2-1995 and order of the Sessions Judge, Keonjhar in Criminal Revision No. 53 of 1995 vide judgment dated 11-1-1999.

2. The subject-matter of dispute, as stated at the Bar, is Ac. 5.88 decimals of land. On the basis of the report regarding existence of apprehension of breach of peace Criminal Misc. Case No. 337 of 1994 was initiated and ultimately decided u/s 145, Cr.P.C. declaring the possession of the first party members who are the daughters through the first wife of the last male owner Raibu Mohanta. The present petitioners preferred Criminal Revision No. 53 of 1995 and learned Sessions Judge after perusal of the oral and documentary evidence and the impugned order u/s 145, Cr.P.C, refused to interfere with the same on the ground of absence of any illegality, Thereafter the petitioners have approached this Court filing application u/s 482, Cr.P.C.

3. At the outset objection was raised on behalf of the first party members/opp.

parties relating to the maintainability of this proceeding inasmuch as in view of the provision u/s 397(3), Cr. P.C. a second revision is barred by the selfsame party. Learned counsel for the petitioners thus argued that when a case of violation of principle of natural justice or abuse of the process of the Court shall be made out, then notwithstanding the prohibition of Sub-section (3) of Section 397, Cr.P.C, this Court is empowered enough to invoke the inherent power. This Court agreed to that proposition of law and heard the parties on relevant contentions accordingly.

4. Learned counsel for the petitioners has emphasised on the point that learned Sessions Judge failed to take note of the illegality committed by learned Executive Magistrate by not properly considering the effective applicability of the decree passed in Title Suit No. 18 of 1976 of the Court of SubJudge, Keonjhar. According to him mere referring to the decree passed in that suit so also the decree passed in the First Appeal was not sufficient enough for learned Sessions Judge to absolve his responsibility while in session of the matter in the criminal revision. Learned counsel for the petitioners states that plaintiff in that suit was another daughter of Raibu Mohanta and the first party members were appearing as Defendant Nos. 2 and 3, whereas the present petitioners were appearing as Defendant Nos. 4, 5 and 6 in that Suit besides Subodhini (petitioners' predecessors in title) as Defendant No. 1. According to the petitioners, since that suit for partition and the challenge regarding validity of the gift deed executed by Raibu Mohanta in favour of Subodhini was negated by the Civil Court, learned Executive Magistrate should have discarded the plea of possession of the first party members and in view of the possession of the second party members on the basis of the registered sale deed of the year 1965 executed by Subodhini, their possession should have been declared.

5. Virtually, by the aforesaid argument, the petitioners drag this Court to re-assess the evidence which has been done by the Executive Magistrate and learned Sessions Judge at their respective level. Unless this Court will be satisfied that the Civil Court's decree was ignored or not properly considered by the Courts below this Court shall not invoke the inherent power to reappraise the evidence as against the concurrent findings of both the Courts below. After hearing learned counsel for the petitioners at length, this Court finds on the statement of the petitioners that in the said Civil Court decree there was no decision on the consequence of the sale deed of the year 1965 said to have been executed by Subodhini in their favour. Under such circumstance, this Court does not find any illegality having been committed by learned Sessions Judge or the Executive Magistrate in not deciding the factum of possession in favour of the petitioners only on the basis of that decree because according to learned counsel for the petitioners in that decree, which was passed over a decade after the sale deed (of 1965) in favour of the petitioners, learned Sub-Judge recorded the finding of possession in favour of Subodhini and not in favour of the present petitioners. Whether declaration of such possession in favour of Subodhini shall legally mean to construe petitioners possession or not is not a pure question of

law. On the other hand that is a mixed question of fact and law inasmuch as to consider that aspect so many facts are required to be verified viz., whether the sale deed was acted upon, why the plea of sale of 1965 was not decided in the Civil suit and so on and so forth. Thus the petitioners must get rid of the wrong impression that because of the aforesaid Civil Court's decree, their possession is bound to be declared. They should bear in mind that in a proceeding u/s 145 Cr.P.C., an Executive Magistrate is called upon to decide the fact of actual possession and not to decide which party has a right to possess. Of course, if the Civil Court's decree declares the possession of one of the parties then Executive Magistrate is bound to respect the same. But as stated above, such is not the case here. At the risk of repetition it may be noted for the sake of clarity that though they claim to be the bona fide purchasers of the disputed case land from Subodhini under registered deed of sale since 1965 and though they figured as defendants and advanced the said contention and contested the suit, factum of finding was not recorded in, their favour nor anything was decided relating to the sale deed of 1965. When petitioner makes that statement regarding the Civil Court's decree, it cannot be construed that possession of Subodhini be deemed to be actual possession of the petitioners.

6. Under the above discussed facts and circumstances, this Court finds no illegality being committed by the Court below in appreciating the evidentiary value of the Civil Court's decree. Hence, this Court is not inclined to invoke the inherent power and accordingly the criminal misc. case stands dismissed.