

Orissa High Court

Adhikanda Behera And Anr. vs Dhaneswar Swain And Ors. on 30 March, 1977

Equivalent citations: 1978 CriLJ 265

Author: N Das

Bench: N Das

ORDER N.K. Das, J.

1. Second Party Nos. 1 and 2 in a proceeding Under Section 145, Cr.PC are the petitioners. The dispute relates to 0.30 acres of land appertaining to plots 882/1489, 880, 876, 882, 882/1520, 883 and 881 in village Pariapatpur, P. S. Baliana, District Puri. The learned Magistrate has found possession in favour of the first party. The judgment does not contain the cases of the respective parties. The proceeding was started On a police report.

2. The case of the first party is that the members of the second party have no title or possession over the disputed land. They are Bhois by caste and have a strong combination under some influential persons of the village. The suit land belonged to one Iswar Mallik. Hadi Bewa was his wife and Kanchan Dei was his daughter. Iswar was in possession of the disputed land. He died in 1966 leaving Hadi and Kanchan as his heirs. His widow Hadi remained in possession of the land for herself and on behalf of Kanchan. After a few months of the death of Iswar, Hadi remarried one Kshetra Mallik and the daughter Kanchan remained under the care and custody of Hadi and Kshetra. The suit land was in possession of Hadi and Kshetra and Kshetra sold this property to the first party on 6-1-1972. After purchase, the first party remained in possession and raised sugarcane etc. on the suit land. The second party Nos. 1 and 2 got a fraudulent and benami document executed by one Gopi Mallik on 14-3-1973 .who was a stranger and lived at a distance of ten miles and had no title or possession over the suit land. The second party members created disturbance in the possession of the first party.

3. The second party members contended that Iswar Mallik belonged to another village. He was a Chaukidar and as he was to discharge the duties of Chaukidar, he had inducted the members of the second party as Bhag Chasis on the land. In spite of the sale deed in favour of the first party, he did not possess the property in question.

4. The learned Magistrate has relied much on the decision in a civil suit between the parties. The judgment in O. S. No. 59 of 1973 (1) of the Court of the Munsif, Bhubaneswar has been filed. After going through the judgment, I find that no finding as to possession has been given by the Civil Court and the Court has held that the sale deed in favour of the first party was invalid and the suit was not maintainable. No finding was given as to the fact which of the parties was in possession of the property. The learned Magistrate has held that the spirit of the judgment shows that the Civil Court has held possession of the first party. This finding is wrong and against the materials on record.

5. The learned Magistrate also relies on the police report. It is well settled that the police report cannot be considered as evidence in a proceeding Under Section 145, Cr.PC A number of documents have been produced besides the judgment and the sale deed. No doubt the learned Magistrate has noticed the affidavits filed by both sides, but he has not considered the same along with other

documents and has not given any finding if these affidavits are supported by other documents. In a very general and cursory manner he has given his finding about the affidavits. It was incumbent on his part to discuss the affidavits along with the documents filed and to come to the ultimate conclusion about possession of the party on the date of the preliminary order. In view of the aforesaid circumstances, I hold that the learned Magistrate 'has not properly exercised his jurisdiction.

6. In the result, the revision is allowed. The case is remanded to the Court below for disposal according to law, keeping in view the observations made above.