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indramoni Devi Vs. Raghunath Bhanja Birabar Jagdeb and ors.

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Court : Orissa

Decided On : Sep-01-1949

Reported in : AIR1950Ori59

Judge : Ray, C.J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 145; Hindu Law

Appeal No. : Criminal Revn. No. 127 of 1949

Appellant : indramoni Devi

Respondent : Raghunath Bhanja Birabar Jagdeb and ors.

Advocate for Def. : B.N. Das and ;G.B. Mohanty, Advs.

Advocate for Pet/Ap. : G.C. Das and ;P.C. Chatterji, Advs.

Disposition : Revision allowed

Judgement :
ORDER

Ray, C.J.

1. The petition arises out of a proceeding under Section 145, Criminal P. C. The dispute relates to 32 acres and odd of lands being admittedly maintenance lands of one Barn a Chandra Bidhar Samant Rama Chandra Bidhar Samant was the son

of Krishna Chandra Bhanja, proprietor of killa Haldia within which the disputed lands are situate. Krishna Chandra had another son (Pitabas Bhanja) who being the elder succeeded, by the rule of primogeniture prevalent in the family in matters of succession and inheritance, to the killa. According to the family custom, Rama Chandra Bidhar (Samant got the disputed lands in lieu of the maintenance. The terms and conditions to which the maintenance grants are subject, as it appears from para 5 of the provincial settlement report (an Exhibit), were that they would revert to the proprietor of the killa if the Bhaya (Rama Chandra, in this particular case) became Nieantan (without issue), Rama Chandra died leaving behind Brajasunder Bidhar Samant his sou and a widow (Indramoni Devi, the petitioner before us). This widow was Ramchandra's second wife. Through her, Ramchandra had three daughters who are alive. Brajasunder too died prematurely leaving behind a widow (Arnapurna). The parties have fought an issue in the Court below as to whether Arnapurna is civily dead on account of her immoral character and a Tyagasudhi having been performed by Indramoni and other agnates in relation to her. I consider that to be wholly immaterial for the purpose of this case. Brajasundar died sometime in June 1946. In January 1947, the proprietor of Haladia, the principal member of the first party, got a deed of surrender executed by her in respect of these lands in lieu of securing her own maintenance and the maintenance for Indramoni by a separate deed. It should be borne in mind that Indramoni Devi is not a consenting party either to the deed of surrender or to the deed of maintenance. Her attitude is that she does not like to lose hold of the lands, her maintenance being a charge over it though it has not been so declared in the civil Court. Raghunath Bhanja, the principal member of the first party, took advantage of the portion that the previous tenants through whom Ramachandra, after him, his son Brajasunder and then Indramoni as well as Brajasunder's widow possessed the disputed lands were also tenants of killa Haladia and got certain pattas and muchalikas exchanged as between himself and the said tenants. Knowing that the tenants had gone over to the side of Raghunath, there arose naturally a tense feeling between the parties. As it usually happens, several people of the village Haladia were attracted sympathetically towards the widow. This gave rise to an apprehension of breach of the peace and was followed by the police report recommending the proceeding under Section 145, Criminal P. C.

2. Both parties filed their respective written statements. On the last day of hearing, the second party could not be present and the matter was heard and decided ex parts in favour of the first party. The first party had adduced evidence in support of their story of possession both documentary and oral. Their witnesses bad been cross examined by the second party, but the latter had not adduced any evidence before the Magistrate. In this state of things, the order having been passed in favour of the first party, the second party has come up in revision. The learned Magistrate, in his brief judgment, works out the problem with regard to the question of title in favour of Raghunath and then by an automatic process declares possession in his favour presumably relying solely upon the fact that the tenants had attorned, by execution of kabuliyat or muchalika, to Raghunath Bhanja, the proprietor of killa Haladia.

3. I have no hesitation in my mind that the ultimate right of reversion that reserved in case of this maintenance grant has not yet accrued. Mr. B.N. Das, appearing for the first party, wants to work out the possession in lieu of maintenance grant started from Brajasunder and argues that as Brajasunder has died Nisantan, the maintenance grant must exhaust itself and in the right of ultimate reversion the proprietor should succeed to the lands. When confronted, he cannot escape from the conclusion that the widow Indramoni Devi and Ramchandra Bidhar Samant's daughters have, their right of maintenance and right of residence in the family lands and in the family house; but he says that after Arnapurna (Brajasunder's widow) surrenders the property, thereby accelerating the reversion, that right must be deemed to have been lost. This I decline to pronounce as an admissible proposition. The position is crystal clear that Indramoni could sue Brajasunder or Brajasunder's widow for maintenance and could have got declaration of a charge in her favour as against these very properties, and this by the simple rule that these properties once belonged to her husband and in the hands of anybody who has come into possession thereof in virtue of a right derived from her husband or at any rate through him. It is also clear that under Hindu Law neither Brajasunder nor his widow could alienate these properties to the prejudice to the maintenance and residence rights of Indramoni and her daughters except if such alienation was for pressing necessity to the estate. The position of deed of surrender is much worse than that of transfer for consideration. The deed of surrender cannot,

therefore, clothe Raghunath Bhanja, the proprietor of Haladia, with any right free from right inherent in Indramoni and her daughters by virtue of their right to be maintained out of these lands. In short, notwithstanding the deed of surrender, the position is the same as it should be if Brijasunder and his widow died leaving no issue behind. As I have said, so long as Ramachandra Bidhar Samant is not Nisantan, the property cannot revert back to the stock from which it came. The question of title, in the sense of right to possession, should, therefore, be decided in favour of Indramoni and her daughters. The daughters, I am told, are not parties. So they should not be bound by this decision.

4. Next is the question of possession. I have read the evidence adduced by the first party with the help of the learned counsel for both parties. The faithful summary of that evidence is that Raghunath Bhanja has not inducted any new tenants into the lands for the purpose of cultivation and growth of crops after the deed of surrender. The tenants who bad been holding since the time of Ramchandra Bidhar Samant have been holding upto the initiation of the proceeding. Question arises whose possession it is. Before the deed of surrender it cannot be gainsaid that the possession of those tenants were possession of Brajasunder's widow as also of Indramoni. If Brajasunder'a widow gives up her possession or even right to possess, the whole of it goes to Indramoni. Mr. Das says that this possession of Indramoni does not continue on account of the intervention of the deed of surrender and the deeds of Muchalika or adornment by the tenants to his client (Raghunath Bhanja). It is pertinent to observe that Indramoni stands completely out of the transactions between Brajasunder's widow and Raghunath and between Raghunath and the tenants who are the members of the first party. Under the circumstances, whether the continuity of Indramoni's possession has either been broken or otherwise intercepted is the crucial point for consideration. Continuity of possession should be understood with reference to the object over which it is exercised. By continuous possession is meant such possession which a party in possession may have occasion to exercise and has exercised and exercises whenever and wherever he or she likes. In this case, the lands are tenanted. The act of possession to be exercised by Indramoni is by receiving her share of the produce. Admittedly, according to all the witnesses for the first party, she received them in the year 1946. The next crop that she was to

receive was not grown in 1947 and should have been received by or due to her in about November or December of that year. In the meantime, the produce has been seized by the Police. In these circumstances, except for the tenants' attorning to Raghunath, the continuity of possession of Indramoni should be maintained. The question, therefore, is whether the tenants by attorning to Raghunath, the possession has gone over to him. Here, it has to be remembered that possession within the meaning of Section 145, Criminal P. C. is actual physical possession and not notional possession. In that sense, Raghunath has not acquired possession. Suppose, the proceeding was initiated after the crop of 1917 had been delivered to Raghunath as a result of the attornment, it could be well said that he thereby acquires possession and that of Indramoni is disturbed. By mere attorning, these tenants cannot be held to have dispossessed their own landlord, namely, Indramoni, In the case of Sarbananda Basu v. Pransankar Roy 15 Cal, 527, a dispute arose as to the right to collect the rents of certain land the ownership of which was claimed by both A and B, and the tenants who bad been paying rent to A refused to pay rent to A and attorned to B. It was held that the conduct of the tenants in attorning to B was not an assertion of possession adverse to A such as to put an end to the relation of landlord and tenant between them and A and to A'S right to collect rents. Such attornment therefore did not deprive A of his right to have recourse to Section 145 in case of a likelihood of a breach of the peace, so as to have his possession of the right to collect the rents maintained, pending proceedings in a civil suit. This case is not only on all fours with the present case but also the present case is rather stronger than the case reported, inasmuch as, the tenants in the present case have not refused to pay rent to Indramoni Dei though they might have been parties to some paper transactions by way of attorning to Raghunath. In this view of the matter, the learned Magistrate's order declaring possession to be with the first party is erroneous and must be set aside.

5. Mr. B.N. Das, appearing for the first party, has pressed for remand. If there is the order of remand, it will be to enable the second party to adduce evidence but not to enable the first party to improve upon his case and adduce further evidence, he having closed it already. If the witnesses for the first party support possession of the second party, I do not find any utility in an order of remand which will

amount to unnecessary protraction of the cage. In the result, I declare possession with Indramoni Devi through the tenant-members of the first party. The said tenant-members must pay the produce of the lands due to Indramoni in her landlord's interest to her. In case they do default in paying, their conduct will amount to disobeying the order. Raghunath Bhanja, the principal member of the first party is hereby prohibited from interfering with the possession of Indramoni through the tenant members of the first party until he evicts her in due course of law. The crops that were seized must now be made over to Indramoni Devi. With regard to the case of other members of the second party who are impleaded along with Indramoni, I have nothing to say as they do not claim possession of the lands nor have they been represented before me.

6. In the result, the petition is allowed and the rule is made absolute.

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