Bharat Sasmal Vs. Additional Sessions Judge and ors.

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Court : Orissa

Decided On : Feb-13-1984

Reported in : 57(1984)CLT368; 1984CriLJ1389

Judge : B.K. Behera and ;R.C. Patnaik, JJ.

Appellant : Bharat Sasmal

Respondent : Additional Sessions Judge and ors.

Advocate for Pet/Ap. : Mr. Ram

Judgement :

B.K. Behara, J.

1. The unsuccessful first party in a proceeding under Section 145 of the Code of Criminal Procedure ('the Code', for short) invokes the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution for the issuance of a writ of mandamus and/or certiorari or any other appropriate writ quashing the order (Annex ure-3) passed by the learned Executive Magistrate declaring some members of the opposite parties to be in possession of the land in dispute and the revisional order (Annexure-4) passed by the learned Additional Sessions Judge, Puri, maintaining Annexure 3.

2. While the petitioner's claim was based on the settlement of the disputed land in his favour under Section 4(2) of the Orissa Land Reforms Act after the vesting of the estate of the opposite party No. 19 with the State Government in 1974 and his possession of the land as a tenant first under the opposite party No. 19 and then in his own right, the opposite parties, who had contested the petitioner's claim, had claimed to have been inducted as tenants on the basis of Kabuliyat and Hukumnama. Both the contesting parties led oral and documentary evidence which were considered by the learned Executive Magistrate who accepted the case of the opposite parties claiming possession of the disputed land. The learned Additional Sessions Judge found no cause for interference in his revisional jurisdiction.

3. Mr. Ram, appearing for the petitioner has contended that in view of the order (Annexure-1) passed by the competent Revenue authority settling the disputed land with the petitioner who had been found in possession thereof, the learned Executive Magistrate and the revisional court went wrong in declaring possession with the opposite parties who claimed to be in possession of the land in dispute. It has also been submitted that there was no apprehension of breach of the peace and therefore, the proceeding had been proceeded with without jurisdiction. Mr. Routray appearing for the contesting opposite parties has submitted that there is no ground for invoking the writ jurisdiction of this Court and the concurrent findings recorded by the two courts cannot be assailed. Mr. Indrajit Ray, the learned Additional Government Advocate, appearing for the opposite party Nos. 1 and 2, has supported the impugned orders as well-founded.

4. We are not prepared to accept the contention raised by Mr. Routray that in view of the statutory bar contained in Section 397(3) of the Code with regard to a second revision after the petitioner unsuccessfully moved the Court of Session, this Court's writ jurisdiction is ousted. In our view, this bar does not affect this court's jurisdiction under Article 227 to interfere with an order made, without jurisdiction. Reference may be made in this connection to the view taken by this Court in 1978 Cri LJ 1316 Sashidhar Naik v. Gadadhar Patel relying on the principles laid down by the Supreme Court in AIR 1976 SC 232 Swarn Singh v. State of Punjab.

5. While this Court has jurisdiction in a matter like this when there is jurisdictional error or when the principles on natural justice have been violated, we find that it is not a fit case calling for interference in the writ jurisdiction of this Court.

6. We notice from the impugned orders that both the courts had considered the respective cases of the parties and the evidence led by them and found possession of the parties opposing the petitioner. The object of Section 145 of the Code is to prevent breach of the peace and for that end, to provide a speedy remedy by bringing the parties before the court and ascertaining which of them is in actual possession and to maintain a status quo until their rights are determined by a competent court. Niceties of title are not to be gone into.

7. Both the first and the revisional courts did consider the cases of both the parties in the light of the documentary and other evidence adduced in support of their claims of possession and took a concurrent view in favour of the opposite parties claiming to be in possession of the disputed land. This is purely a question of appreciation of evidence. Both the contesting parties submitted to the jurisdiction of the court after the learned Executive Magistrate, on an application made by the petitioner himself, initiated a proceeding under Section 144 which later was converted into one under Section 145 of the Code. It could not be said that there was no apprehension of breach of the peace when the final order was passed. Having submitted to the jurisdiction of the learned Executive Magistrate without raising any objection in this regard either before the learned Executive Magistrate or before the Court of revision, the petitioner should not now be allowed to take this ground. A party should not be allowed to take a new ground in a certiorari proceeding. See : AIR 1981 SC1862 Sohan Singh v. General Manager, Ordnance Factory, Khamaria, Jabalpur and (1983) 56 Cut LT 175 : 1984 Lab IC 125 District Transport Manager (Administration), Orissa State Road Transport Corporation, Baripada v. Presiding Officer, Labour Court, Orissa.

8. Concurrent findings of fact of competent authority or lower courts giving cogent reasons therefor are not open to challenge unless such findings are perverse or based on no evidence. See : AIR 1982 SC756 Babu v. Dy Director of Consolidation. The High Court is not an appellate authority in certiorari

proceedings and it will not review evidence and arrive at an independent finding vide 1981 (2) Serv LK 550 Somnath Sahu v. Stale of Orissa and : (1983)IILLJ1SC Bhagat Ram v. State of Himachal Pradesh). As has been observed in MR 1975 SC 1297 Babhutmal Raichand Oswal v. Laxmibai R. Tarte the power of superintendence of the High Court is limited to see that the subordinate court or tribunal functions within the limits of its authority. It cannot correct mere errors of fact by examining the evidence and re-appreciating it. No interference is called for on a question of fact under Article 227 of the Constitution. See : AIR 1983 SC535 Mrs. Labhkuwar Bhagwani Shaha v. Janardhan Mahadeo Kalan. The Supreme Court has held in : [1984]1SCR211 Mohd. Yunus v. Mohd. Mustaqim at p. 40 of AIR:

A mere wrong decision without anything more is not enough to attract the jurisdiction of the High Court under Article 227.

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.

9. In the instant case, the proceeding was not without jurisdiction and there has been no infringement of the principles of natural justice. Rival questions regarding rights to property are involved. Such matters are not to be decided in writ jurisdiction. See : (1983)2SCC153 Mohammad Ibrahim v. City Magistrate, Varanasi.

10. For the aforesaid reasons, we find no case for interference. The writ application is dismissed leaving the parties to bear the costs of this proceeding.

R.C. Patnaik, J.

11. I agree.