

Arjun Ch. Samal and ors. Vs. Ananta Ch. Dash and ors.

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SooperKanoon Citation : sooperkanoon.com/534169

Court : Orissa

Decided On : Apr-02-1992

Reported in : 1992(II)OLR302

Judge : J.M. Mahapatra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145 and 147

Appeal No. : Criminal Revision No. 282 of 1987

Appellant : Arjun Ch. Samal and ors.

Respondent : Ananta Ch. Dash and ors.

Advocate for Def. : P.K. Parida, Adv.

Advocate for Pet/Ap. : N. Rath, Adv.

Disposition : Revision allowed

Judgement :

J.M. Mahapatra, J.

1. The revision at the instance of the second party members is directed against the order dated 21-5-1987 of the learned Executive Magistrate, Kendrapara in Criminal Misc. Case No. 73/86 allowing the interveners to be impleaded as parties, and holding the present proceeding to be maintainable notwithstanding the

pendency of a Title Suit bearing No. T. S. No. 368 of 1986 in the Court of the Munsif, Kendrapara.

2. The short facts of the case be may briefly stated thus. The members of the first party (opp. parties 1 to 8) filed a petition Under Section 147 of the Code of Criminal Procedure before the Sub-Divisional Officer, Kendrapara alleging obstruction of public road by the villagers of Badanka, the members of the second party (petitioners). The learned Executive Magistrate after causing an enquiry through the Tahsildar, Aul, being satisfied that there was apprehension of breach of peace between the parties for exercising easementary rights over the path passing through the portions of plot Nos. 2041 and 2043 of village Badanka, directed initiation of a proceeding Under Section 147, Cr. P. C. and called upon both the parties to appear before him and file their written statements. Both the parties appeared and filed their statement and the hearing of the case proceeded to some length, when some interveners numbering seventeen filed a petition for impletion. The members of the second party (the present petitioners) also filed a petition to drop the proceeding on the ground that a civil suit bearing T. S. No. 368 of 1986 in the Court of the Munsif, Kendrapara was pending in respect of self-same property. After hearing the matter the learned Executive Magistrate passed the impugned order dated 21-5- 1987 holding that the present proceeding is maintainable notwithstanding the pendency of the civil litigation, and further allowing the interveners to be impleaded in the case.

3. From the materials on record, it appears that the subject matter of the dispute relates to a passage in the village. The first party members, claimed right of passage on the disputed land, whereas the second party members wanted that the disputed land should not be utilised as passage. It further appears that a civil suit bearing T. S. No. 368 of 1986 is pending in the Court of the Munsif, Kendrapara in which both the parties have been restrained. In such state of affairs, therefore, possibility for any breach of peace is not expected.

4. Mr. B. Rath, the learned counsel for the petitioners relying art a decision of the Supreme Court in the case of Ram Sumer Puri Mahant v. State of U. P. and Ors. , reported in AIR 1985 SC 472 and few other decisions of this Court, namely,

Radhamohan Panda and Ors. v. Brundaban Naik and Ors. , reported in 1986 (I) OLR 566, Basanta Sahu @Basanta Kumar Sahu and Anr. v. Rukman Sahu, reported in 1989 (II) OLR 308 and in the case of Dhirendranath Panda @ Misra v. Niranjana Kumar Misra and Ors. , reported in 1989 (II) OLR 495 has contended that when a dispute relating to property is pending in a Civil Court where the question of possession is involved, and the parties can conveniently approach the Civil Court for interim relief like injunction for prevention of breach of peace, the continuance of a proceeding Under Section 145 Cr. P.C. is improper. Although present proceeding is one Under Section 147, Cr. P.C.. I am of the view that the ratio of the aforesaid decisions would be applicable in all fours. The learned counsel on the other side has failed to convince us as to how the present proceeding should be allowed to continue before the Executive Magistrate, when a civil suit in respect of the self-same property is subjudice. Relying therefore on the aforesaid decisions (supra), I am of the view that the present proceeding is not maintainable.

5. In the result, the revision is allowed and the impugned order of the learned Magistrate by which the proceeding Under Section 147 Cr. P. C. was initiated is quashed.