

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1054 of 2011

Dhires Pradhan and others *Petitioners*
-versus-
Gatikrushna Rout and another *Opposite Parties*

CORAM: JUSTICE S.PUJAHARI

ORDER
25.03.2022

Order
No.

05. 1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to quash the order dated 31st January, 2005 passed by the learned Executive Magistrate, Dhenkanal and the judgment dated 9th February, 2011 passed by the learned Adhoc Additional Sessions Judge (FTC), Dhenkanal.
3. As it appears, the Opposite Parties were recorded tenant of the case land wherein there is forceful note of possession of the Petitioners. However, the Opposite Parties filed a petition under Section 145 of Cr.P.C. before the learned Executive Magistrate, Dhenkanal with a claim that though they are

recorded tenant of the case land, but taking advantage of a forceful possession, their possession is being disturbed by the Petitioners. In such proceeding, the learned Magistrate declared the possession of the Opposite Parties (1st party in the proceeding under Section 145 of Cr.P.C.) on the date of preliminary order. The present Petitioners, who are second party in the proceeding under Section 145 of Cr.P.C., aggrieved by the same, approach the revisional court against such order. The revisional court, however, after going through the materials available on record, has passed the reasoned order, which reads as thus:-

“The parties have adduced evidence with regard to their respective possession. In addition the first party had filed rent receipt of the year 1994 and of the year 1998 showing payment of rent in respect of Khata No.4. The note of forcible possession in respect of ancestor of the petitioner in the ROR does not ipso facto prove their continuous possession till the date of preliminary order. The first party members have satisfactorily proved their possession over the case land through oral as well as documentary evidence. The second party members have not been able to rebut such evidence. In that view of the matter, the finding of possession of the learned Magistrate in favour of the first party members cannot be faulted. The petitioners have not been able to show any impropriety and illegality in the impugned order.”

4. It is the contention of the Petitioners that though they have perfected their title by adverse possession and in

possession of the same, the order has been passed by the learned Executive Magistrate which was solely on the basis of the record of right. Possession being material and from the record of right, it clearly emanates that the Petitioners (2nd party in the proceeding under Section 145 of Cr.P.C.) were in possession of the case land, the learned Executive Magistrate could not have declared their possession to the Opposite Parties (1st party in the proceeding under Section 145 of Cr.P.C.). Learned Ad-hoc Additional Sessions Judge (FTC), Dhenkanal also in oblivious to the same have passed the order impugned. The same speaks of exercise of jurisdiction by both forums with material irregularity and the orders are perverse. Hence, the Court should interfering with the same and set aside the same and quash the proceeding under Section 145 of Cr.P.C. in exercise of its inherent power under Section 482 of Cr.P.C., moreso when the Petitioners have perfected their title by adverse possession over the case land.

5. The same is, however, contested by the Opposite Parties to be without any substance.

6. However, from the impugned order of the learned Ad-hoc Additional Sessions Judge (FTC), Dhenkanal as quoted above, this Court finds that taking note of the evidence on record and assigning adequate and good reasons upheld the order of the learned Executive Magistrate that the Opposite Parties (1st party in the proceeding under Section 145 of Cr.P.C.) is in possession of the case land. The title is not to be looked into in the proceeding under Section 145 of Cr.P.C.

7. Hence, I see no illegality and infirmity in the said order. Hence, the same warrants no interference in exercise of the power under Section 482 of Cr.P.C., which is nothing in the guise of a second revision.

8. Accordingly, the Criminal Misc. Case is devoid of merit stands dismissed.

(S.Pujahari)
Judge