
Nila Majhi Vs Ude Bhoi and Others

Criminal Appeal No. 108 of 1961

Court: Orissa High Court

Date of Decision: Feb. 2, 1992

Acts Referred:

Penal Code, 1860 (IPC) & Section 426, 447

Citation: (1962) 28 CLT 382

Hon'ble Judges: G.K. Misra, J

Bench: Single Bench

Advocate: M.S. Rao and M.K.C. Rao, for the Appellant; G.R. Rao and K.S.R. Murty, for the Respondent

Final Decision: Allowed

Judgement

G.K. Misra, J.

This is an appeal against an order of acquittal dated 16-2-1961 passed by Sri B.K. Misra, Magistrate, First Class,

Titilagarh, in Case No. 38 of 1960.

2. The complainants case was that the disputed land was in his possession. On 6-6-1960 he had ploughed the land and had sown seeds. But on 7-

6-1960 the accused persons along with others trespassed into the land, destroyed the seeds and committed offences under Sections 447 and 426,

Indian Penal Code.

3. The accused persons did not take the plea regarding identity of the land. Their cause was that it was a joint family land. They had ploughed it on

7 -6-1960 and the complainant did not plough it on 6-6-1960 and that they had not committed any offence. They had a bonafide belief that they

were entitled to possess the disputed land.

4. Ude Bhoi (accused No. 1) and Lakhi Bhoi (accused No. 4) are two brothers. Ude has three sons-Ghantia (accused No. 3) Bhagaban (accused

No. 2) and Ratnakar (accused No. 5). The learned trial Court has found that the lands in dispute were transferred by two sale-deeds, -ext. 2 dated

5-5-1953 and ext. 1 dated 12-7-1954 in favour of the minor brother and father of the complainant. Subsequent to the transfers the disputed lands

have been mutated in the names of the members of the complainant's family who are paying rent all through as evidenced by ext. 3 series. The

learned trial Court held that the complainant was in possession of the disputed lands till the date of occurrence. He discarded the evidence of the

two defence witnesses on the question of possession. To test the correctness of his finding I have gone through the entire evidence on record and I

am satisfied that the learned Magistrate came to the correct conclusion is holding that prior to the date of occurrence and subsequent to the dates

of transfer the accused persons were not in possession of the disputed lands and the complainant was throughout in possession.

5. The only ground on which the order of acquittal was passed relates to the identity of the lands. On a perusal of the statements of the accused

persons and the cross-examination of the prosecution witnesses, I am fully satisfied that there was absolutely no controversy regarding the identity

of the disputed lands. Mr. G.R. Rao, appearing on behalf of the Respondents, fairly conceded that the learned Magistrate was wrong in attaching

importance to the question of identity of the lands. On this ground, therefore, the order of acquittal cannot be supported.

6. Mr. G.R. Rao, however, seriously contends that the Respondents had a bonafide belief that they were entitled to possess the disputed lands and

in pursuance of such belief they cultivated the lands on 7-6-1960. To appreciate his contention, it is necessary to clarify the facts a little. Admittedly

Ude Bhoi had been to Assam about 20 years ago and he returned in February 1960. Mr. Rao's contention is that Ude Bhoi who is admittedly

the eldest member of the family, was not an executant to the sale-deeds and on his return from Assam his attempt to cultivate the disputed lands

cannot be said to be mala fide. According to him, if (sic) was not an executant to the sale-deeds, Ude's title cannot pass in favour of the transferees

and, therefore, Ude, who is admittedly a member of, the original class, cannot be said to be mala fide in his action in cultivating the disputed lands

on 7-6-1960. I am not prepared to accept such a broad proposition of law. The admitted facts stare in the face of the defence contention. The

disputed lands passed out of the family for 7 years during which period the complainant's family were in possession and were paying rents. Even

if Ude was absent and was not an executant to the sale-deeds, his action in trespassing into the disputed lands without taking recourse to law

Courts can be nothing else other than mala fide. The intention must always be gathered from the circumstances of the case, and in this case it was to

intimidate and annoy the complainant in possession. It is well settled that mere assertion of a claim of right is in itself not a bonafide claim of right. I

am not, therefore, prepared to accept the contention that the Respondents are protected by the theory of bonafide claim of right.

7. In the result the appeal is allowed and the Respondents are convicted under Sections 447 and 426, Indian Penal Code and sentenced to pay a

fine of Rs. 20/- (rupees twenty) each and in default to undergo simple imprisonment for one week each u/s 447 Indian Penal Code. No separate

sentence u/s 426 Indian Penal Code is necessary. Out of the fines, if realised, the complainant would be entitled to a compensation of Rs. 50/-

(Rupees fifty).