

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.953 of 2007

MOHAN MAHTO (DEAD BY LRS.) & ORS. ...Appellant(s)

Vs.

MD.MASROOF & ORS. ...Respondent(s)

O R D E R

1. Heard the learned counsel appearing for the appellants. There is no appearance on behalf of the respondents.

2. By the impugned order, the learned Single Judge of the High Court has dismissed a Writ Petition filed by the present appellants arising out of proceedings under Section 147 of the Code of Criminal Procedure, 1973 (for short, CrPC). The appellants are the legal representatives of one Kitku Mahto. The proceedings were initiated under Section 147 of CrPC in respect of the subject property. Initially the proceedings were under Section 144 which were converted into the proceedings under Section 147 CrPC. A restraint order was passed by Sub-Divisional Magistrate. The restraint order was confirmed by the Sessions Court. By a cryptic order, the Writ Petition filed by present appellants has been dismissed by the High Court. We may note here that the impugned order has been stayed by this Court on 20<sup>th</sup> July, 2007.

3. The only ground of challenge is that in the Title Suit No.374 of 1962 to which the present appellants were parties, by the judgment dated 30<sup>th</sup> March, 1965, the Additional Munsif held that the present appellants were in possession of the subject property. In the face of the decree of the Civil Court, the proceedings under Section 147 CrPC could not have been initiated. Moreover, though a copy of the aforesaid judgment in the suit was placed before the High Court, it has not been considered.

4. Only on this ground, we quash and set aside the order dated 30<sup>th</sup> December, 1996 passed by the Sub-Divisional Magistrate, Ramgarh and orders passed by the Sessions Court in Revision and the impugned order passed by the High Court in the Writ Petition.

5. The appeal is accordingly allowed.

.....J.  
[ABHAY S.OKA]

.....J.  
[RAJESH BINDAL]

New Delhi;  
March 1, 2023.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 953/2007

MOHAN MAHTO (DEAD BY LRS) RAMESHWAR MAHTO &amp; ORS. Appellant(s)

VERSUS

MD. MASROOF &amp; ORS.

Respondent(s)

Date : 01-03-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA  
HON'BLE MR. JUSTICE RAJESH BINDALFor Appellant(s) Ms. Rajeshri Nivuratirao Reddy, Adv.  
Mr. Abhijit Sengupta, AOR

For Respondent(s) Mr. Anando Mukherjee, AOR (Not present)

UPON hearing the counsel the Court made the following  
O R D E R

The appeal is allowed in terms of the signed order.

Pending application, if any, also stands disposed  
of.(ANITA MALHOTRA)  
AR-CUM-PS(NAND KISHOR)  
COURT MASTER

(Signed order is placed on the file.)