

GAHC010071052022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Rev.P./149/2022

NURU MIYA @ NUR HUSSAIN AND ANR
S/O LT. ABU BAKKAR ALI
R/O VILL- KANDULIMARI, P.S. CHHAYGAON
DIST. KAMRUP, ASSAM

2: RAJAB ALI
S/O LT. ABU BAKKAR ALI
R/O VILL- KANDULIMARI
P.S. CHHAYGAON
DIST. KAMRUP
ASSA

VERSUS

SARBHANU KHATUN AND ANR
D/O LT. REFAJ UDDIN
VIL- KANDULIMARI
P.S. CHHAYGAON
DIST. KAMRUP, ASSAM

2:DORBESH ALI
S/O LATE TAJAN ALI
R/O VILL- KANDULIMARI
P.S. CHHAYGAON
DIST KAMRUP
ASSA

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : MR. D BORAH

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

29.05.2024

Heard Mr. J. Ahmed, learned counsel for the petitioners. Also heard Mr. D. Borah, learned counsel for the respondent Nos. 1 and 2.

2. This application filed under Section 397 of Cr.P.C. *read with* Section 401 of the Code of Criminal Procedure, 1973 challenging the Order dated 28.03.2022 passed by the learned Executive Magistrate, Kamrup, Amingaon in Case No.142m/2021.

3. It is contended by the petitioners that they have purchased various plots of land of different dags from various persons including the respondent No.1 and in total they have purchased land measuring 11 Bighas 2 Kathas 5 Lechas from the respondent's No.1 father and uncles in the year 1971 and since then, the petitioners have occupied the said land. The petitioners utilized the occupied land by constructing their houses, pond and by using the remaining land for cultivation purpose. But, surprisingly, on 27.07.2021, the respondent No.1 filed a petition before the Court of the Deputy Commissioner, Kamrup, Amingaon under Sections 107/145/146 of Cr.P.C. claiming that her deceased father along with her brothers has been enjoying the said land since 2017 and further she had stated that in the year 2017, her brother appointed the petitioners as adhiar of the land mentioned in the Schedule A and B of her petition.

4. Thereafter receiving the said petition filed by the respondent No.1 before the Court of the Deputy Commissioner, Kamrup, Amingaon, under Sections

107/145/146, the case record was transferred to the Court of learned Executive Magistrate, Kamrup, Amingaon and accordingly a Case being No.142m/2021 under Sections 145/146 of Cr.P.C. has been registered and a report was called for from the concerned police station. After perusal of the report submitted by the Chhaygaon police station, the learned Executive Magistrate drawn up the proceeding under Section 145 of Cr. P.C. and also attached the schedule A and B land vide order dated 23.06.2021.

5. Against the order dated 23.06.2021, the petitioners filed a revision petition being Crl.Rev.Case No.15/2021 before the Court of learned Additional Sessions Judge, Kamrup, Amingaon which was dismissed vide order dated 24.02.2022. However, vide order dated 08.12.2021, the learned Executive Magistrate vacated the attachment order dated 23.06.2021 in respect of Schedule A land and the learned Additional Sessions Judge made an observation that the petitioners may apply for vacating the attachment order over the Schedule B land before the learned Trial Court. But, in the meantime the respondent No.1 filed a Title Suit being T.S. Case No.86/2021 before the Court of learned Civil Judge, Kamrup, Amingaon, for declaration of Right, Title and Interest over the Schedule A and B land and also prayed for permanent injunction. The respondent No.1 also filed a petition being Mis(J) Case No.115/2021 and in the meantime one Dorbesh Ali/respondent No.2 also impleaded himself as a party in connection with Case No.142m/2021 and on the basis of the said petition, the learned Executive Magistrate passed the order dated 15.03.2022 without hearing the petitioners and vacated the attachment order dated 23.06.2021 over Schedule B land with an observation that the respondent No.2 namely Dorbesh Ali is in possession of the said land.

6. Coming to know about the said petition, the petitioners filed a petition for recalling the order dated 15.03.2022, whereby, the possession has been declared in favour of the respondents, though, the petitioners were occupying the said land since long. Thereafter, the learned Executive Magistrate vide order dated 23.03.2022 had held "that by an inadvertent error in last order dated 15.03.2022, the schedule B of disputed land was stated to be under the possession of Dorbesh Ali, the necessary party in the instant case. Possession claim by any party over any part of the disputed land by means of this Court's order is hereby made null and void until decided by the superior Court and accordingly, the proceeding stands dropped with immediate effect".

7. But, surprisingly, the respondent/first party filed a another review application dated 28.03.2022 under Order-47 Rule-1 of C.P.C. *read with* Sections 114 and 151 of C.P.C., and on the basis of which, the learned Executive Magistrate passed the order dated 28.03.2022 holding that order dated 15.03.2022 should be in operation. The assertion made by the First party in review application dated 28.03.2022 also vouch for the same. Accordingly, it has been held that any confusion regarding the order dated 23.03.2022 is hereby put to rest to the extent that the order dated 15.03.2022 is still alive, valid and will run without hindrance and accordingly this order will supersede the order dated 23.03.2022. After obtaining the order dated 28.03.2022, the respondent Nos. 1 and 2 hired some gundas and came to the schedule B land and took the fishes from the pond and further with the help the police, the said respondents even tried to occupy another 7 Bighsa 2 Kathas and 5 Lechas of land situated in the northern side of the Schedule B land in pursuant to the order dated 15.03.2022 and 28.03.2022.

8. On being highly aggrieved and dissatisfied with the impugned Order dated 28.03.2022 passed by the learned Executive Magistrate, Kamrup, Amingaon in Case No.142m/2021, the petitioner has preferred this instant petition praying for quashing of the same.

9. Mr. Ahmed, learned counsel for the petitioners have submitted that the learned Trial Court passed the perverse order dated 15.03.2022 without giving an opportunity of hearing to the present petitioners. The learned Executive Magistrate had rightly vacated the schedule A land, but failed to vacate the possession of Schedule B land which was under the possession of the present petitioners since 1971. He also submits that the Title Suit is pending before the learned Civil Judge, Kamrup, Amingaon and thus, the Executive Magistrate had no authority to pass the impugned order dated 15.03.2022 only with an observation that one Dorbesh Ali is in possession of the said land. More so, the learned Magistrate have also no power to review its own order passed on 15.03.2022 and subsequent order dated 23.03.2022 as the Criminal Court has no jurisdiction to review its own order. More surprisingly, the learned Executive Magistrate had also passed the order dated 28.03.2022 by reviewing its own order dated 23.03.2022 which is not at all maintainable in the eye of law. Accordingly, it is submitted that the order dated 28.03.2022 passed by the learned Executive Magistrate, Kaprum, Amingaon in case No.142m/2021 is liable to be set aside and quashed.

10. In this context, Mr. Borah, learned counsel for the respondents has submitted that after investigation the land was attached, but, the learned Executive Magistrate had made one Dorbesh Ali as a necessary party in connection with this case who is the owner of one part of the land and his

ownership has also been certified by the Circle Officer. Though, the petitioners claimed their possession over the disputed land, but they could not produce any registration or any other document or land document before the learned Executive Magistrate or before the learned Additional Sessions Judge, Kamrup, Amingaon. He admitted that the learned Executive Magistrate has no power to review its own order. Accordingly, Mr. Bora, learned counsel for the petitioner has submitted that the entire criminal proceeding initiated before the learned Executive Magistrate under Sections 145/146 of Cr.P.C. is not maintainable in the eye of law and the entire proceeding is liable to be set aside and quashed as the matter is pending before the superior Court i.e. Civil Court wherein, the respondent had claimed their Right, Title and Interest over the schedule land.

11. In support of his submission, he relies on the decision passed by the Apex Court in Special Leave to Appeal (Crl) Case No.5444/2022 (***Mohd. Abid & Ors. vs. Ravi Naresh & Ors.***) and emphasized on paragraph No.4 of the said judgment which read as under:-

"4. It is, however, an admitted fact that the petitioners have already filed a suit for injunction in which ex-parte adinterim injunction has been granted by the Civil Court, Faizabad, Uttar Pradesh on 05.12.2020. Once the Civil Court is seized of the matter, it goes without saying that the proceedings under Section 145/146 Cr.P.C. cannot proceed and must come to an end. The interse rights of the parties regarding title or possession are eventually to be determined by the Civil Court."

12. He also relied on another decision passed by the Apex Court reported in ***AIR 2000 Supreme Court 1504*** passed in connection with Special Leave Petition (Crl) 3858/1999 (***Amresh Tiwari vs. Lalta Prasad Dubey & Anr.***), wherein, also the Apex Court expressed the view that "when a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, there is no justification for initiating a parallel criminal

proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the civil court is binding on the criminal court”.

13. Considering the submissions made by the learned counsels for both sides, I have perused the Case record and annexures filed along with the petition. It is seen that there was a dispute between the parties in regard to possession of land and for which the respondents approached before the Court of learned Executive Magistrate, Kamrup, Amingaon wherein, the proceeding under Section 145/146 of Cr.P.C. was initiated and the land was accordingly attached and subsequently vacated the attachment order dated 23.06.2021 vide impugned orders dated 15.03.2022, and further declared the said order dated 15.03.2022 as null and void and dropped the proceeding vide order dated 23.03.2022 and accordingly, the learned Executive Magistrate had reviewed his order 28.03.2022 which is not at all maintainable in the eye of law; as criminal Court has no authority or jurisdiction to review its own order which is illegal. Moreover, from the submissions and from the annexure of documents, it is seen that the respondents had already approached before the civil forum claiming for their Rights, Title and Interest over the said disputed land and the matter is still under adjudication, wherein, the petitioner will also get the chance to adjudicate the matter and to contest the case by filing their written statement etc. Thus, the order passed by the learned Executive Magistrate, Kamrup, Amingaon on 28.03.2022 by reviewing its own order dated 15.03.2022 and the order dated 23.03.2022 has found to be illegal and accordingly, the entire criminal proceeding which is pending before the learned Executive Magistrate in connection with No.142m/2021 is hereby set aside and quashed. Both the parties may claim their rights before the Civil Forum.

14. Resultantly, the criminal revision petition is allowed. The Registry shall send down the record of the learned Court below with a copy of this judgment and order. The parties have to bear their own cost.

JUDGE

Comparing Assistant