

GAHC010071672023



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

Case No. : Crl.Rev.P./146/2023

KANAK DAS
S/O LATE AMULYA DAS
R/O VILL- BIDYA NAGAR
P.S. NAGARBERA
DIST. KAMRUP (R), ASSAM
PIN-781127

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:SUDEB DAS
S/O LATE KALIPADA DAS
R/O VILL- BIDYA NAGAR
P.S. NAGARBERA
DIST. KAMRUP (R)
ASSAM PIN-78112

Advocate for the Petitioner : MR. DILIP DEY,
Advocate for the Respondent : PP, ASSAM, MR. J A SIKDAR (R-2),MR. S I TALUKDAR (R-2),MR. A H MONDAL (R-2),MR. A R SIKDAR (R-2)

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

05.11.2024

Heard Mr. D. Dey, learned counsel appearing for the accused petitioner as

well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent No.1 and Mr. A. R. Sikdar, learned counsel appearing for respondent No.2.

2. This is an application filed under Section 397/401 of Cr.P.C., read with Section 482 Cr.P.C. against the order dated 10.01.2023 passed by the learned Executive Magistrate, Kamrup, Amingaon in connection with Case No. 104M/2022 under section 145 Cr.P.C. wherein the petitioner was directed to handover the possession of disputed land to the respondent No.2 and asked the petitioner to refrain from any unlawful interference on such land.

3. The case of the petitioner is that the petitioner is the son of Lt. Amulya Das and during his lifetime, deceased Amulya Das had a plot of land measuring 2 Bighas which is covered by Dag No. 54 of PP no. 194 of village Naitor under Nagarbera Mouza of Nagarbera Revenue Circle in the district of Kamrup (R), Assam. Due to financial hardship the elder brother of the petitioner mortgaged 1B 2Ks 10Ls of land to the respondent No.2 on receipt of money amounting to Rs.7,000/- and Rs.15,000/- in total Rs.22,000/- in two occasions by signing some papers and handed over the land to the respondent. But after passing some years when the petitioner went to the house of the respondent to refund the money and wanted to take back the possession of the mortgaged land, the respondent refused to return the said land by saying that the said land was registered by the brother of the petitioner by executing Kutcha deed during the year 1995, 1996 and 2000.

4. Thereafter, the petitioner lodged an FIR before the officer in-charge, Nagarbera PS and a non-FIR case was registered vide No.15/2022 under Section 107 Cr.P.C. Thereafter, the said case was forwarded to the Executive Magistrate, Amingaon, Kamrup and on receipt of the report from the Circle

Officer, Nagarbera Revenue Circle, a proceeding under Section 145 Cr.P.C. was drawn up. The trial Magistrate tried the case, examined the witnesses as well as the report of the Circle Officer and after hearing the parties, the learned Executive magistrate disposed of the case directing the petitioner to hand over the disputed land to the respondent and refrain from any unlawful interference on the disputed land. Hence, this revision petition.

5. Learned counsel for the petitioner has submitted that it is true that the petitioner had mortgaged the disputed land to the respondent by taking some amount but no registered sale deed was executed with the respondent. On the basis of such kutcha sale deed, the possession was handed over to the respondent No.2 which is illegal as per Section 17(b) of Registration Act, 1908. It is further submitted that if the value of the land is more than Rs. 100/- registration is required. Hence, the order passed by the learned Executive Magistrate dated 10.01.2023 is liable to be set aside.

6. According to learned counsel for the petitioner, the learned Executive Magistrate without going through the validity and genuineness of the Kutcha deed has come into a finding by directing the petitioner to hand over the disputed land to the respondent No.2. The learned Magistrate also failed to appreciate the legality and genuineness of three numbers of kutcha deeds executed by the brother of the petitioner at the time of handing over of the possession of the land to the respondent.

7. The learned counsel for the petitioner has also pointed out that the report of the Circle Officer reveals that the land was mutated in the name of the respondent No.2 by virtue of three unregistered deeds in 1995, 1996 and 2000

before the land was converted into periodic patta land which is illegal and not admissible in the eye of law.

8. On the other hand, learned counsel for the respondent No.2 submits that the respondent No.2 had purchased the disputed land from the brother of the petitioner and since then the respondent No.2 is in possession of the said land. As per police report, the respondent No.2 is in possession of the disputed land. Hence, the order impugned is just and proper and no interference is warranted in the facts and circumstances of the case.

9. Having heard the learned counsel for the parties and having gone through the materials on record, the only question that falls for consideration in this petition is whether the Executive Magistrate committed any error in passing of the impugned order dated 10.01.2023.

10. Section 145 falls in Chapter X of the [Code of Criminal Procedure](#), 1973. The Chapter X of the Code relates to the maintenance of public order and tranquility. [Section 145](#) reads thus :

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.--(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by the

Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be

representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale- proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under [section 107](#)."

11. [Section 145](#) is intended only to provide a speedy remedy for the prevention of breaches of peace arising out of the dispute relating to the immovable property by maintaining one or other of the parties in possession.

12. The object of this section is to enable a Magistrate to intervene and pass a temporary order in regard to the possession of property in dispute, having effect until the actual right of one of the parties has been determined by a competent Civil Court. The Magistrates should guard themselves against the section being abused by person using it with the object of getting possession of the property and driving the other side to figure as a plaintiff and prove his title. In a proceeding under [Section 145](#), a Magistrate has not to enter into the question of title or the right to possess and the foundation of his jurisdiction is the existence of a dispute likely to cause breach of the peace. The proceedings under [Section 145](#) of the Code are quasi-judicial and quasi-administrative in nature.

13. In the proceedings under Section 145, Cri.P.C., the Courts are concerned with the question of possession and not the title of the parties. The material question for consideration in such proceedings is always, who was in

possession, was it exclusive or joint. Naturally, the proceedings under Section 145, Cri.P.C., can be taken only if there is an apprehension of the breach of the peace.

14. In [Ram Shanker Tewari v. The State](#), 1970 Cri LJ 770, the Allahabad High Court emphasized that, "the mere fact that a certain person or certain persons are in actual possession implies his or their actual possession to the exclusion of any other. In the case of property over which several persons have a joint right no doubt actual possession of one of the co- sharers may be deemed in law possession for himself and on behalf of the other co-sharers but [in that case](#) the other co- sharers will be deemed to be in constructive possession as distinct from the possession of the co-sharer in whose actual possession the property is at a given time."

15. In Mahar Jahan (supra), the Supreme Court made the following observations :

"4. It is not disputed by the learned counsel for the parties that this very property which is the subject- matter of these criminal proceedings is also the subject- matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 Cri.P.C. may terminate, the order of the criminal court would always be subject to decision by the civil court. Inasmuch as the parties are already before the civil court, we deem it proper to let the civil suit be decided and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit.

5. We direct the criminal proceedings initiated under Section 145 Cri.P.C. to be quashed. The parties are allowed liberty of approaching the civil court. As we have already noted that Civil Suit No.404 of 2003 pending in

the Court of Senior Civil Judge, Delhi, is a suit only for issuance of permanent injunction. We allow the parties liberty of filing any application for interim relief therein.

6. It is submitted by the learned counsel for the appellants before us that Respondent 2 brings antisocial elements and causes disturbance in their peaceful living in the house. On the contrary, it is submitted by the learned counsel for Respondent 2 that Respondent 2 is an old-aged person and without any shelter over his head and presently he is almost at the mercy of others and it would only be fair if he is allowed to live in at least a part of the suit property which belongs to him. We do not propose to enter into merits of the pleas raised by either party before us.

7. We have simply noted the contentions raised by the parties. The civil court, in our opinion, would be the most appropriate forum to take care of such grievances and pass such interim order as would reasonably protect the interests of both the parties. The civil court may issue an ad interim injunction, may appoint a Commissioner or Receiver or may make any other interim arrangement as to possession or user of the property which is the subject-matter of proceedings in the civil court exercising the power conferred on it by [Sections 94](#) and [151](#) of the Code of Civil Procedure.

8. In view of what has been stated herein above, the appeal is allowed. The proceedings under Section 145 Cri.P.C. are directed to be quashed. The parties may approach the civil court. We make it clear that looking to the relationship of the parties, the civil court shall feel free to make such ad interim order as it deems fit consistently with the facts and circumstances of the case without feeling embarrassed by the limited scope of the suit which is a suit for permanent injunction.

9. The civil court would be at liberty to grant interim relief without regard to the fact whether the application for that purpose is moved by the plaintiffs or the defendant. Such an application as and when made, shall be heard and decided expeditiously."

16. In Ram Sumer Puri Mahant (supra), the Supreme Court made the following observations :

"When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any 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 in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceeding should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession."

17. The Supreme Court in the case of [Amresh Tiwari v. Lalta Prasad Dubey and another](#), (2000)4 SCC 440 has held that :

"We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court then proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil court would be binding on the Magistrate."

18. The Supreme Court in the case of *Kunjbihari v. Balram and another*, (2006)11 SCC 66 has held that :

"Proceeding u/S. 145 Cri.P.C. would be an abuse of process of court and if any party claims to be in possession of property and seeks its protection, it is for the party to approach the civil court and get an appropriate order, but the proceeding u/S. 145 Cri.P.C. cannot be allowed to be continued in the facts and circumstances of the case."

19. It is thus quite clear from the perusal of the aforesaid judgments of the Supreme Court that in view of the pendency of the civil suit in respect of the same property, the proceedings under Section 145 of Cri.P.C. should not be allowed to continue.

20. The jurisdiction conferred upon an Executive Magistrate under Section 145 of the Code is an exceptional one and the provisions of the section should have to be strictly followed while taking action under it. The object of the section is not to provide parties with an opportunity of bringing their civil disputes before a Criminal Court or of manoeuvring for possession for the purpose of the subsequent civil litigation, but to arm the Magistrate concerned with power to maintain peace within his local area. Therefore, a duty is cast on the Magistrates, to guard against abuse of provisions by persons using it with the object of getting possession of property while attempting to drive the other side to a Civil Court.

21. The very jurisdiction of the Magistrate to proceed under this section, arises out of his satisfaction, of a dispute likely to cause breach of peace either on a report of a Police Officer or upon other information, which satisfaction must be reflected in the order which he should make in writing, stating the grounds of his satisfaction. This order which is the sine qua non of the proceedings, initiated under Section 145, Cri.P.C., must require the parties concerned in such dispute, to attend his Court in person or by pleader on a specified date and time, and to put in written statements of their respective claims as regards the facts of actual possession of the subject of dispute.

22. In the case in hand, the respondent No.2 claims to be the sole owner of the disputed land by virtue of purchasing the said land from the brother of the petitioner. But the case of the petitioner is that though the land was mortgaged

on payment of some amount to the respondent, subsequently, when the petitioner approached before the respondent to refund the money and asked them to return the said land, the respondent No.2 refused to return the same by stating that the land in question has been mutated in his name as he purchased the said land from the brother of the petitioner. Apparently, both the parties claimed to be the owner of the disputed land, but there is no reflection in the order that there is likelihood of breach of peace and tranquility over the disputed land.

23. A Magistrate before he starts proceedings under Section 145 has to state the grounds for his being satisfied that a breach of the peace was likely. In the proceedings under Section 145, the Magistrate must first be satisfied that there is a dispute concerning land and secondly that the dispute is likely to cause a breach of the peace. Merely because a petition has been filed under Section 145, Cri.P.C., it does not follow that there is a dispute concerning land. The Magistrate will have to distinguish between a case where one party is clearly in possession of the land and another party who is not in possession of the land attempts to interfere with the possession of the other party and thereby attempts to create breach of the peace and a case where a bona fide dispute regarding land exists, which is likely to create breach of the peace. It is only in the latter case that the Magistrate will start proceedings under Section 145. In the former case, where a party who is the aggressor attempts to interfere with the possession of the opposite party and thereby attempts to create a breach of the peace and files a petition stating that breach of the peace is likely, the proper course for the Magistrate is not to proceed under Section 145, but to take steps against the party attempting to create a breach of the peace under Section 107, Cri.P.C. and bind them to keep the peace.

24. To infer a situation of emergency, there must be some material before a Magistrate on record from the submissions of the parties, documents produced or evidence adduced and not upon the personal impression of a Magistrate. Such circumstance could also be inferred from the report submitted by any independent agency like the police.

25. It also deserves to be noted that the Magistrate in the impugned order has observed in the very first paragraph that the possession of the plot of land was with the respondent No.2 herein at the time when the proceedings under Section 145 of the Code were initiated.

26. The upshot of the whole discussion, therefore, is that the impugned order cannot be sustained. It is accordingly set-aside and the subsequent proceedings, if any, based on it are also quashed. Both the parties are directed to maintain peace and tranquility. If necessary, the Executive Magistrate may proceed against the parties under Section 107 of the Code. The parties may be asked to execute a bond to maintain peace.

27. In the instant case, parties are totally silent whether any civil suit is pending between the parties in the court.

28. Since the dispute mainly is, whether the petitioner is the sole owner of the property or the property belongs to the respondent No.2 by virtue of purchase of the said land, the civil court is the proper forum to decide the matter in question.

29. This revision petition is disposed of accordingly.

JUDGE

Comparing Assistant