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CRR 448 of 2018
With
IA NO: CRAN 2 of 2018 (Old No: CRAN 3303 of 2018)

Smt. Tanu Kalpana Limbu Rana
Versus
The State of West Bengal & Anr.

Mr. Moukh Mukherjee
Mr. Abhijit Singh,
Mr. S Mondal. ... for the petitioner.

Mr. Pravas Bhattacharya,
Ms. Sima Biswas
... for the State.

Mr. Pravas Bhattacharya, usually appears on behalf of the State and he is requested to appear in this case on behalf of the State. His appointment to be regularized.

The Order No. 84 dated 01.02.2018 passed by the learned Sub Divisional Magistrate, Siliguri, District Darjeeling in connection with Petition Case No. 266 of 2012 filed by the private opposite party, whereby learned Sub-Divisional Magistrate converted the application under Section 144 of the Criminal Procedure Code to Section 145 of the Criminal Procedure Code and by further directing possession of the land to be handed over to the opposite party to this revisional application within a month.

Learned advocate appearing on behalf of the petitioner has submitted that by the order impugned, learned Sub-Divisional Magistrate decided both the

ownership and possession of the property in question that too converting the application under Section 144 of the Criminal Procedure Code to Section 145 of the Criminal Procedure Code.

On careful perusal of the entire order impugned, learned Sub-Divisional Magistrate is found to have decided the ownership of the land in favour of the petitioner not only that the opposite party i.e. petitioner of this case was directed to hand over the possession of the land in question to the opposite party of this case.

In deciding a case under Section 145 of the Criminal Procedure Code, learned Sub-Divisional Magistrate cannot decide the ownership of the property and in terms of that ownership, learned Sub-Divisional Magistrate cannot direct for handing over the possession of the land.

From the order itself, it is found that on behalf of the O.P. i.e petitioner it was submitted that the issue of this case was pending before the Civil Court and ownership issue will be decided by the Civil Court. That submission was further virtually admitted on behalf of the petitioner.

Considering the facts and circumstances discussed hereinabove, I am of the opinion that the learned Sub-Divisional Magistrate travelled beyond the jurisdiction and the order passed by him on 1st February, 2018 is liable to be set aside.

The Order No. 84 dated 01.02.2013 in connection with Petition Case No. 266 of 2012 stands set aside.

With the aforesaid observation, the revisional application stands disposed of.

Pending application, if there be any, also stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

(Bibhas Ranjan De, J.)