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C.R.R.1628 of 2021

In Re: An application under Article 227 of the Constitution of India with
Section 482 of the Code of Criminal Procedure;

Sri Sukumar Maity and others
Versus
The State of West Bengal and others

Mr. Madhusudan Sur,
Mr. Dipankar Paramanick.
...for the State.

The present revisional application has been prayed for quashing of the order dated 25.03.2021 passed by the learned Additional Sessions Judge, 2nd Court, Kakdwip, South 24 Parganas in Criminal Revision No.32 of 2019 which relates to the order dated 12.06.2019 passed by the learned Executive Magistrate, Kakdwip in M.F. Case No.341 of 2019.

An application before the learned Executive Magistrate was fled under Section 144(2) of the Code of Criminal Procedure. The learned Executive Magistrate by its order dated 12.06.2019 called for a report as also directed that enjoyment of the rightful possession of the petitioners relating to retention the land till disposal of the case. Learned revisional court interfered so far as the issue relating to possession is concerned. However, the absoluteness of the order which was in the order dated 01.08.2019 was not interfered with.

Having considered the subject matter of the issue so

involved, I am of the opinion that no proceedings under Section 144(2) of the Code of Criminal Procedure can be filed and decided by the learned Executive Magistrate which relates to possession. Claim of right, title and interest of any property is absolutely jurisdiction of the civil court. Learned Executive Magistrate could have interfered in case there was any breach of peace at the locale or there was any dearth of maintenance of public order and tranquility. The same not being there, only on the basis of BL & LRO report, learned Magistrate lacks jurisdiction to hold as to who would enjoy the property.

Consequently, the proceeding before the learned Executive Magistrate Being M.F. Case No.341 of 2019 is quashed. The present order would also cover the observations made by the learned revisional court in Criminal Revision No.32 of 2019 as infructuous. The order so passed are consequently set aside.

Parties would be at liberty to approach the civil court to establish their issues relating to title and possession. If there are disputes so far as breach of peace is concerned or maintenance of public order and tranquility, the Executive Magistrate would be at liberty to direct the police authorities to take steps. As the main case being M.F. Case No.341 of 2019 has been quashed and subsequently set aside, no further order needed to be passed in the present revisional application.

With the aforesaid observations, CRR 1628 of 2021 is disposed of.

Pending application, if any, is consequently disposed of.

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

(Tirthankar Ghosh, J.)