

:: IN THE COURT OF THE SESSIONS JUDGE, NALBARI ::

Present: Smti S. Bhuyan.
Sessions Judge,
Nalbari.

(Criminal Revision Case No. 48/18)

**Revision against the order dated 10/09/18 passed by learned
ADM, Nalbari in connection with Misc Case No. 150^M/2016 u/s-
145 of Cr.P.C.**

1. Sri Bipul Chakraborty

S/o- Late Manik Ch Chakraborty
R/O- Girls' Hostel, Tihu College
P.O. & P.S.- Tihu, District-Nalbari (Assam)

2. Dr. Satyajit Talukdar

S/o- Late Nabin Ch Talukdar
R/o- Tihu veterinary quarter
P.S. & P.S - Tihu, District-Nalbari, Assam

3. Sri Jiten Sarma

S/o- Late Mahendra Sarma
R/o- Balipara, Mouza- Sariha
P.S.-PatacharkuchiRevisionist/ Petitioners.

-Versus-

Mrs Karabi Bhattacharjya

W/o-Pranab Saikia
R/o- Ward No 1, Tihu Town.
P.S. - Tihu, District- Nalbari,Opposite Party

Advocates appeared:-

For the Revisionist :- Mr. P. Haloi, Advocate
For the Opp. Party :- Mr. P. Sarmah, Advocate
Date of Argument :- 28/05/19, 27/06/19
Date of Judgment :- 11/07/19

JUDGMENT

1. The instant revision has been preferred u/s-397/399 CrPC by revisionists Bipul Chakraborty, Satyajit Talukdar and Jiten Sarma being highly aggrieved and dissatisfied with the order dated 10/09/18 passed by learned ADM, Nalbari in Misc. Case No. 150^M/2016 u/s-145 CrPC.

2. Fact leading to this case is that opposite party of this revision Karabi Bhattacharjya filed a petition before the learned district magistrate against present revisionist petitioner Dipak Kr Chakraborty, Satyajit Talukdar and Jiten Sarma which is registered as Misc Case No.150^M/16. It is the plea of the 1st party Karabi Bhattacharjya that she after death of her husband Mridul Das inherit her landed property along with her daughters which is measuring 2 Kathas 11 Lechas 1 Pua covered by myadi patta no.41 and dag no.9 & 10 bounded by North-land of Hemanga Kalita, South-land of Anup Kalita, East- Tihu feeder road, West-land of 2nd party and on this land 1st party made a personal road for her use and use of her tenant so that small vehicle can entered easily and one gate is also installed at the entrance of the said personal path and her boundary is bounded by concrete wall. She alleged that 2nd parties instead of going to their landed property via village road used 1st party's personal road present inside her house and she restrained 2nd party to use her personal path. 2nd party on 25/05/16 forming a group with some other people made attempt to dismantle concrete boundary wall of her boundary and when 1st party restrained 2nd party, they threatened to kill her and to lift her minor daughters.

3. On receipt of the petition, after registering a case learned ADM Nalbari drawn up a preceding u/s-144/107 CrPC prohibit the 2nd party from entering in to the disputed land, issued show cause notice as to why they shall not be ordered to execute a bond of Rs 1000/- each for maintain peace for a period of one year. Finally the u/s-144/107 CrPC proceeding was converted to u/s-145 CrPC and vide order dated 08/09/18, the possession of the 1st party declared by the learned ADM over the disputed land and proceeding u/s-145 CrPC was closed.

4. 2nd parties contested the proceeding by appointing their counsel and submitting joint written statement. They denied the plea of the 1st party and stated that wife of 2nd party Bipul Chakraborty purchased

land form Madhusudan Kalita and No.2, 2nd party Satyajit Talukdar purchased land from Jon Kalita and their seller Madhusudan Kalita, John Deka purchased the said land from 1st party and opposite party no.3 Jiten Sarma purchased land from 1st party directly by executing registered sale deed and in the sale deed on the West side presence of 10 feet road is mentioned connecting Tihu feeder road and said path is claimed by 1st party as her personal path and 2nd party and other people using the said path and for the repairing of the path they bring sand, stone etc. and all of them with other persons made contact with the electricity department for the connection of electricity and when the electricity department is about to erect electric post on the said path, 1st party restrained and when they are constructing their house by taking loan. On the point of restraining of the 1st party they filed a petition before Circle officer Tihu on 27/04/16 and Circle Officer Tihu issued notice to both sides, discussion was held with circle officer, Tihu in presence of both sides and in the said discussion 1st party was asked to give access of the road to 2nd party but 1st party refusing to do so, left the discussion and placed the gate and thereafter on 25/05/16 circle officer Tihu submit a report before the learned ADM, Nalbari and thereafter 1st party filed this case.

5. In this case, during the trial the 1st party earlier preferred a revision against the order of Addl District Magistrate, Nalbari dated 12/09/16 by which Ld ADM, Nalbari asked the 1st party to remove the barricade on the prayer of 2nd party and said petition was disposed off by my learned predecessor with a direction to the learned trial court to dispose off the case within a short period. Accordingly, learned trial court vide order dated 10/09/18 after hearing both the sides disposed off the case and declared possession of the 1st party in respect of the disputed land and closed the proceeding after making local inspection of the disputed land.

6. I have heard argument of both sides. Perused case record, impugned order dated 12/09/18.

7. It has been argued by learned revisionist petitioner counsel that revisionist Jiten Sarma purchased land from opposite party Karabi Bhattacharjya and wife of Bipul Chakraborty revisionist no.1 and Satyajit Talukdar revisionist no.2 purchased land from Madhusudan Kalita, Jon Kalita and their vendor purchased land from opposite party Karabi Bhattacharjya and in all the sale deeds presence of 10 feet path connecting their respective land to Tihu feeder road is mentioned and opposite party closed the path when revisionist petitioner were taking electric connection.

8. Learned counsel further submitted that after hearing the 2nd party Ld ADM, Nalbari vacated the order dated 30/05/16 and direct 1st party to remove the barricade and allow the 2nd party to use the path and in connection with construction of the wall revisionist no.2 Satyajit Talukdar filed an ejahar alleging that opposite party constructed the wall stealing his bricks and the order of learned ADM, Nalbari of declaring possession in favour the opposite party Karabi Bhattacharjya is erroneous after allowing 2nd party to use path.

9. Refuting the same, learned opposite party counsel submitted that learned trial court after hearing both sides and making a local inspection in presence of the parties to the proceeding and other persons passed the order of possession in favour of the 1st party and hold that there was no path present. He submitted that there is village path present that connected revisionist land and revisionist wanted to use land of opposite party/ 1st party and disputed land stand in the name of opposite party and she has absolute possession over there and revision being devoid of merit does not lie.

10. I have scrutinized the record. On scrutiny of the impugned order dated 10/09/18, learned Addl District Magistrate, Nalbari, conducted local inspection and he visited the disputed land on 07/02/18 and inspection was made in presence of Circle Officer, Tihu and other localities and in presence of the parties and found during the field visit no public path was noticed over the disputed land and disputed land is bounded by concrete wall and gate is fixed on the front side i.e eastern

side of the disputed land. On the eastern side of disputed land Tihu feeder road is present.

11. On scrutiny of the trial court record, it is seen that the present revisionist petitioner made a prayer before Circle Officer Tihu for curve out one road and accordingly Circle Officer issued notice to both sides and submit a report to ADM (Revenue), Nalbari that on the prayer of Bipul Chakraborty and others, Karabi Bhattacharjya was asked to curve out a 10 feet road on the land of patta no. 41 and dag no.90.

12. In the proceeding u/s-145 CrPC the magistrate can declare the possession of the parties in the subject matter of the dispute and if the trial magistrate found that any party is wrongfully, forcibly, illegally dispossessed within two months next before the date on which the report of police officer or from other information, the trial magistrate may treat the parties so disposes in possession of the disputed land on the date of order under sub section 1 of section 145 CrPC. Except this the magistrate has no jurisdiction to declare any other rights in favour of the parties to the proceeding.

13. From the reading of the pleading of the parties, it goes to show that 1st party was in possession of the disputed land and perusal of impugned order and local inspection conducted by the trial magistrate also goes to show that there is possession of 1st party present in respect of the disputed land.

14. In a proceeding u/s-145 CrPC, Executive magistrate cannot declare right, title in respect of the land, only possession can be declared.

15. On scrutiny of the trial court record, I find that the learned trial court has rightly declared the possession in favour of the 1st party.

16. From the aforesaid discussion, I find no illegality, infirmities, and errors in the decision of learned ADM, Nalbari in passing the impugned order declaring and holding possession of the 1st party in respect of the disputed land. Accordingly, the impugned order dated 10/09/18 passed

by learned ADM, Nalbari in connection with Misc Case No. 150^M/2016 u/s- 145 of Cr.P.C. is hereby upheld.

17. Hence, the revision petition being devoid of merit is dismissed. Stay order if passed earlier is hereby vacated.

18. Send down the LCR with a copy of this court judgment to the learned trial court immediately.

19. Judgment delivered under hand and seal of this court on this 11th day of July, 2019 at Nalbari, District-Nalbari.

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Typed by:
Biswajit Bhattacharjya
Copyist