

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

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

(Criminal Revision Case No. 54/18)

Revision against the order dated 29-10-18 passed by learned Addl. District Magistrate, Nalbari in connection with Case No-110^m/18 u/s 144 of Cr.P.C.

Md. Rikjul Ahmed.

S/O-Late Mafizuddin Ahmed.

R/O- Nalbari Town, Malikuchi Ward No.2

P.S- & Dist-Nalbari, Assam.Revisionist/Petitioner

-Versus-

Sri Manash Pratim Dutta.

S/O- Manoj Kr. Dutta.

R/O- Vill- Barkura, Mouz-Batahgila.

P.S-& Dist- Nalbari, Assam. Opp. Party/ 1st party.

Advocates appeared:-

For the Petitioner :- Mr. J. Medhi, Ld. Advocate.

For the Opp. Party:- Mrs. R. Lahkar, Ld. Advocate.

Date of argument :- 17-07-19.

Date of judgment :- 30-07-19.

JUDGMENT

1. The instant revision has been preferred u/s-397/399 CrPC by Md. Rikjul Ahmed challenging the order dated 29/10/18 passed by learned Addl. District Magistrate, Nalbari in connection with Case No.110^m/18 u/s-144 CrPC.

2. The fact leading to this case is that opposite party Manash Pratim Dutta filed a petition before learned ADM,Nalbari u/s-144 CrPC against present revisionist Rikjul Ahmed. He stated that he took a room on rent by executing one rent deed with Rafiqul Hussain S/O- late Ghanashyam Ali situated at N.T Road, Nalbari near Hari Mandir measuring 30 feet x 20 feet at the monthly rent of Rs.7000/- and paid Rs.50,000/- as advance and Rafiqul Hussain is the owner of the said room and there is no right

whatsoever present in the said room in respect of 2nd party Rikjul Ahmed and when he was preparing the room fit to run the business, 2nd party with 3/4 other persons trespassed into the room on 19/09/18 and under threatening driven out 1st party's worker, mason and lock the room and 1st party lodged a case at the Nalbari PS but police did not take any action. He stated that 2nd party is giving threatening to him and he is suffering loss as he is paying room rent to its owner and on 28/10/18 when he went to open the lock of the room, 2nd party gave him threatening that if he tried to open the lock he will set ablaze the room.

3. I have heard argument of learned counsel for both sides. Learned counsel appearing for the petitioner submitted revisionist is the co-pattadar of the disputed room and he was running a business in the said disputed room. Pranita Das, co-pattadar of the land where disputed room stand and she filed a suit which is registered T.S Case No.83/09 in respect of the disputed land against Rikjul and other and suit was decreed in favour of Pranita. Appeal preferred by defendant Rafiqul before the learned Civil Judge, Nalbari and first appellant court set aside the decree passed by the Munsiff, against which plaintiff of T.S Case No.83/09 Smt. Pranita, presented second appeal before the Hon'ble High Court which was registered as R.S.A. No.227/15 and same is pending and during pendency of the 2nd appeal dispute arose in between Manash and Rikjul where learned ADM,Nalbari passed order against revisionist to open the lock of the room and this order of learned ADM,Nalbari is against the rule of law when there is civil suit pending and matter is subjudiced before Higher Court in respect of the dispute between Pranita and Rafiqul and when interest of Rikjul is present on the disputed property, the transfer of the room by any modes is illegal during pendency of the 2nd appeal.

4. It has been argued by learned opposite party counsel revisionist as 1st party. This is a proceeding u/s-144 CrPC which is to be dispose of within two months and stay is to be vacated and attachment order is to be set aside.

5. On receipt of the petition learned District Magistrate endorsed S.K Bora, ACS, ADM, Nalbari to take up the matter and accordingly, criminal case vide No.110^m/18 registered and learned ADM,Nalbari issued notice to the 2nd party prohibited the 2nd party from entering into the disputed

land and directed O/C Nalbari to open the lock and being highly aggrieved with the aforesaid impugned order Rikjul Ahmed filed the revision petition.

6. From the trial court record it is seen that disputed room is the part of sub-judice matter before the Hon'ble Gauhati High Court and said case is not yet disposed of finally and when the matter is subjudiced before the Hon'ble Gauhati High Court, in view of the second appeal preferred by Smt. Pranita Das, the transfer alienation of the right and possession in respect of said property to any third party is illegal and therefore, the order passed by learned ADM, Nalbari is not sustainable under the law and is liable to be set aside and the proceeding u/s-144 CrPC is in violation of the mandate of law and against the direction of the appellate court and proceeding itself is erroneous and petition filed by the opposite party u/s-144 CrPC does not stand and same is not maintainable when transfer of the property in respect of the subjudice matter is illegal. Accordingly, impugned order dated 29/10/18 passed by the learned ADM, Nalbari in Case No. 110^m/18 is set aside being erroneous and against the rule of law.

7. Accordingly, revision allowed. No cost to parties.

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

9. Judgment delivered under hand and seal of this court on this 30th day of July, 2019 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)
Sessions Judge, Nalbari.

Typed by
Devajit Roy, Stenographer Grade II