

**:: IN THE COURT OF THE SESSION JUDGE, NALBARI ::**

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

**(Criminal Revision Case No. 21/19)**

**Revision against the order dated 21/05/19 passed by learned  
Addl. District Magistrate, Nalbari in connection with Misc Case  
No. 5<sup>m</sup>/18 u/s-145/146(1) CrPC**

**1. Md. Latif Ali**

S/o- Late Sadar Ali  
R/o- Vill- Dalbari Kaniha  
P.S.- Ghograpar  
Dist - Nalbari, Assam

**2. Syed Mintu Ali @ Khairul**

S/o- Late Ajijur Rahman  
R/o- Vill- Khatikuchi  
P.S.- Ghograpar  
Dist - Nalbari, Assam

**3. Md. Khabir Ali**

S/o- Late Bahar Ali  
R/o- Vill- Balipara  
P.S.- Ghograpar  
Dist - Nalbari, Assam .....Revisionists Petitioners.

-Versus-

**Md. Jamir Ali**

S/o- Late Achar Ali  
R/o- Vill-Dalbari Kaniha  
P.S.-Ghograpar  
Dist - Nalbari. .... opposite party/ respondent

**Advocates appeared:-**

For the Revisionist :- Mr. Bareque Ali, Advocate  
For the respondent :- Mr. Champak Dutta, learned PP  
Date of Argument :- 14/02/2020  
Date of Judgment :- 14/02/2020

## **JUDGMENT**

1. This is an application filed by petitioners Md. Latif Ali, Syed Mintu Ali @ Khairul and Md. Khabir Ali u/s-397/399 CrPC assailing the order dated 21/05/19 passed by learned ADM, Nalbari in case No.5<sup>m</sup>/18.

2. Being highly aggrieved and dissatisfied with the impugned order dated 21/05/19, revisionist petitioners who are the 2<sup>nd</sup> party of case No. 5<sup>m</sup>/18 preferred this revision on the ground that learned trial court erred in law and facts and goes against the equity of justice and gone against the established principle of law, failed to apply judicious mind and order dated 21/05/19 is self contradictory, case is delayed as presiding officer not taken up the case citing 'self busy' and on 03/05/19, 2<sup>nd</sup> party could not appear due to an urgent meeting, but learned ADM failed to consider the same Disputed land is under possession of Madrasa which is bounded by bamboo fencing and presently a Moktab house is present and 2<sup>nd</sup> party must have a chance to cross examine the witnesses and to place their evidence and therefore prays to set aside the impugned order dated 21/05/19 passed by learned trial court.

3. The fact leading to this revision is that opposite party Jamir Ali as 1<sup>st</sup> party filed a petition before the District Magistrate, Nalbari against revisionist petitioners Latif Ali, Syed Mintu Ali @ Khairul and Khabir Ali as opposite party inter alia citing that 1<sup>st</sup> party Jamir Ali got the disputed land mentioned in the schedule of the petition which covered by kheraj myadi patta No.87 dag No.245/278 measuring 2 kathas land of Mouza Pub Banbhag village Dalbari Kaniha bounded by North, South and East village road, West 1<sup>st</sup> party's residential house from his maternal uncle who was childless. The 1<sup>st</sup> party is possessing the disputed land after inheriting the same on the death of his maternal uncle Rejak Ali and possessing the same peacefully by paying revenue. Maternal uncle of 1<sup>st</sup> party Rejak Ali planted coconut tree, bokul tree on the disputed land during his life and apart from this 1<sup>st</sup> party also

planted several trees, but 2<sup>nd</sup> party trying to dispossess the 1<sup>st</sup> party. On 03/01/18 when 1<sup>st</sup> party visit disputed land to see the plant planted by him, 2<sup>nd</sup> parties armed with sparrow and other deadly weapon chased him to finish his life but 1<sup>st</sup> party run away and somehow managed to save his life and apprehending that 2<sup>nd</sup> parties at any time finished his life and because of the constant threatening of 2<sup>nd</sup> party he is suffering form insecurity and because of the aforesaid incident there is every chance of breach of public peace, therefore filed the petition with a prayer to draw proceeding u/s-145/146 CrPC.

4. On receipt of the compliant petition learned ADM, Nalbari after perusal of the petition which is supported by an affidavit drawn up a proceeding u/s-145 CrPC, issued notice to the parties and attached the disputed land u/s-146(1) CrPC fixing 08/02/18 for appearance of parties and written statement of 2<sup>nd</sup> parties.

5. Thereafter, 2<sup>nd</sup> party appeared on next fixed date on 08/02/18 and submitted written statement on 11/07/18. 2<sup>nd</sup> party in their written statement denied the plea of 1<sup>st</sup> party and further denied the incident dated 03/01/18 as alleged by 1<sup>st</sup> party and their plea is that disputed land is a reserved land of Dalbari Kaniha Madrasa which is present on the North West side of No. 2 Dalbari Jame Masjid and this land is under possession of committee of Madrasa which is covered by patta No. 87, dag No's. 245/278 measuring 2 kathas bounded by fencing and on 24/08/18 as per resolution of the managing committee of the Madrasa, entrusted Latif Ali and Majnur Ali to cultivate Rabi cultivation and for that Latif and Majnur will pay Rs.1000/- yearly to the Managing Committee of Madrasa and about 40 years back Rejak Ali gifted the land in the name of Madrasa and since then Madrasa is in possession of the disputed land.

6. The 1<sup>st</sup> party submitted in chief of 4 PWs and on the date fixed for cross examination of PWs, 2<sup>nd</sup> party that is revisionist petitioners were found absent. Accordingly, on 21/05/19 learned ADM, Nalbari passed the impugned order closing the evidence and declared

possession of the disputed land in favour of 1<sup>st</sup> party and against the impugned order dated 21/05/19 2<sup>nd</sup> party preferred this revision petition.

7. Learned counsel for the revisionist submitted that cross examination could not be done as court did not sit due to busy schedule in panchayat election and all of sudden passed the impugned order without giving chance to cross examine and to adduce the evidence of 2<sup>nd</sup> party and learned counsel submitted cross examination could not be done as presiding officer not sit citing busy and panchayat election and prays to remand the case for fresh trial with a direction to the trial court to give chance to 2<sup>nd</sup> party to adduce their evidence and cross examine the PWs.

8. Learned counsel appearing for 1<sup>st</sup> party made submission that 1<sup>st</sup> party was appeared with witness but 2<sup>nd</sup> party did not cross examined for which on the date fixed for cross examination of the PWs not finding 2<sup>nd</sup> party, closed the evidence and passed the order which is as per material on record and there is no error and illegality and 2<sup>nd</sup> party is applying the delay tactics.

9. I have taken into consideration the submission so made by learned counsel for both sides and perused the record of the trial court. With regard to the submission of revisionist counsel, trial court has not given chance to the 2<sup>nd</sup> party and court did not sit and court adjourned the case on the ground of always busy, I have scanned the record of trial court.

10. Trial court record revealed that on 11/01/18 learned ADM, Nalbari admitted the petition of the opposite party Jamir Ali, drawn up a proceeding u/s-145 CrPC, issued notice to the 2<sup>nd</sup> parties, passed order of attachment of the disputed land u/s-146(1) CrPC fixing 08/02/18 for written statement. On 08/02/18 2<sup>nd</sup> party appeared and took time to submit their written statement and on 08/02/18 case is posted to 08/03/18 for written statement. On 08/03/18, 2<sup>nd</sup> party again

took time to submit their written statement and finally 2<sup>nd</sup> party submitted written statement on 11/07/18 more than 5 months of receiving notice from the court. Thereafter, on 04/09/18, 1<sup>st</sup> party Jamir Ali submitted in chief of 4 PWs and case was fixed on 23/10/18 for PWs. Record revealed on three dates it was the 2<sup>nd</sup> party who either took time for cross examination of the witnesses of 1<sup>st</sup> party or absent in the court to avoid cross examination of PWs and therefore, I do not find force in the submission of learned counsel for the revisionist that the case was adjourned on the ground of court busy. The record revealed it was 2<sup>nd</sup> party who repeatedly took time from the beginning of the trial of the case and absent to defer the further proceeding of the case.

11. I have perused the material available on record and upon perusal of the documents available in the record and from the pleadings of the parties, I find that late Rejak Ali was the original owner and Jamir Ali was his nephew and Rejak Ali died childless. Copies of jamabandi pointed mutation of name of Jamir and Najir Ali s/o Achar Ali in the disputed patta in place of Rejak Ali after his death as legal heir.

12. On scrutiny of the statement of revisionist made in the revision petition it is noticed that he stated case was adjourned and delayed due to adjournment of the case by the court on the ground of court busy and but on scrutiny of record it is seen that it was the revisionist who first took time for submitting written statement and thereafter absent himself to avoid cross examination. The material available on the record shown the possession of the 1<sup>st</sup> party and that is opposite party of the revision and I do not find any illegality and error in the order passed by learned ADM, Nalbari in case No. 5<sup>m</sup>/18 u/s-145/146(1) CrPC and therefore, no interference by this revisional court is called for.

13. In the light of above discussion order dated 21/05/19 passed by the learned ADM, Nalbari in Misc. Case No. 5<sup>M</sup>/18 u/s-145/146(1) CrPC is hereby upheld. Revision petition has no merit and is dismissed. However, no cost to the parties.

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

Judgment delivered under hand and seal of this court on this 14<sup>th</sup> day of February, 2020 at Nalbari, District-Nalbari.

(Smti S. Bhuyan)  
Session Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)  
Session Judge, Nalbari.

Typed by:  
Biswajit Bhattacharjya,  
Copyist