

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

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

**(Criminal Revision Case No. 35/18)**

**Revision against the order dated 24/07/18 passed by learned  
ADM, Nalbari in connection with Misc Case No. 27<sup>M</sup>/2016 u/s-  
145/146(1) of Cr.P.C.**

**Rejek Ali**

S/o- Late Raghu Shikh

R/o- Vill- Kurihamari

P.S.- Sialmari Dist - Nalbari, Assam .....Revisionist/ 2<sup>nd</sup> party

-Versus-

**Aminul Haque**

S/o-Lt Raghu Sheikh

R/o- Vill- Kurihamari, P.S.-Sialmari

Dist- Nalbari, Assam .....Opp. Party/ 1<sup>st</sup> party

**Advocates appeared:-**

For the Revisionist :- Mr. Abdul Majid, Advocate

For the Opp. Party :- None appeared.

Judgment delivered :- 17/06/2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/399 CrPC by revisionist Rejak Ali being highly aggrieved and dissatisfied with the order dated 24/07/18 passed by learned ADM, Nalbari in Misc. Case No. 27<sup>M</sup>/2016 u/s-145/146(1) CrPC whereby learned ADM, Nalbari passed order directing the police to attach the land u/s-146(1) CrPC and to lock 5 numbers of room (tin chali) standing over the disputed land until further order.

2. Fact leading to this revision petition is that Aminul Haque, opposite party of the revision petition as 1<sup>st</sup> party petitioner filed a petition before the District Magistrate, Nalbari against the revisionist as 2<sup>nd</sup> party/ Opposite Party with a prayer to start a proceeding u/s-144 CrPC and to restrain Rejak Ali, 2<sup>nd</sup> party to enter into the disputed land. The disputed land is in the village Kurihamari under pub Barkhetri mouza covered by abantani (allotted) touzi patta no 1614 bounded by North-Karim Ali, South- Road, East-Weekly market and West-Ajed. Case of the 1<sup>st</sup> party Aminul Haque is that he is poor daily labour, 2<sup>nd</sup> party is a wicked person who is his elder brother. The father of both sides are same and they are step brothers. Mother of 2<sup>nd</sup> party expired but mother of 1<sup>st</sup> party still living. Under the Government scheme meant for landless person about 20 years back 2 bighas of land allotted in favour of 1<sup>st</sup> party by the Government under the Barkhetri revenue circle village Kurihamari and since then 1<sup>st</sup> party Aminul Haque with his mother possessing the land by paying revenue. But 2<sup>nd</sup> party secretly by providing wrong materials with the help of lat mandal deleted the name of his mother and entered his name as allottee in the chitha. Thereafter, 2<sup>nd</sup> party entered into the disputed land, constructed temporary tin chali house and rented the same to others and 2<sup>nd</sup> party gave threatening to 1<sup>st</sup> party Aminul Haque when 1<sup>st</sup> party tried to vacate the land.

3. On this petition learned ADM, Nalbari called for a report from O/C Sialmari PS and after getting the report from O/C, Sialmari PS, learned ADM, Nalbari on being satisfied drawn up a proceeding u/s-145 CrPC against the parties, issued notice to the parties vide order dated 06/02/16, directed the 2<sup>nd</sup> party to submit WS and attach the disputed land u/s-146(1) CrPC.

4. 2<sup>nd</sup> party on receipt of the notice appeared before the learned ADM, Nalbari, contested the proceeding by submitting WS. 2<sup>nd</sup> party Rejak Ali i.e. present petitioner denied the allegation of the 1<sup>st</sup> party Aminul Haque and prays for dismissal of the case. The plea taken by

the 2<sup>nd</sup> party is that 1<sup>st</sup> party is his step brother and he is trying to grab the ancestral share of the property falls on him and his mother and disputed land is his share of land which he interchanged with his brother Md Ajibar Ali and accordingly his name is entered under the Mukalmua revenue circle with brother Ajibar Ali and he is possessing the same for last 20 years with his family.

5. None appeared for the opposite party at the time of hearing the petition. I have heard learned counsel for revisionist. Learned counsel for revisionist submitted that learned ADM without hearing parties to the proceeding, going through the material on record at the time when case was fixed cross of PWs, denying the right of revisionist, passed the impugned order on a off date on the petition filed by 1<sup>st</sup> party and thereby committed grave illegality and error in passing the impugned order.

6. I have scanned the material on record of the trial court. During the trial, as revealed from the record, it is seen that several developments took place. 1<sup>st</sup> party Aminul Haque submitted his in chief in affidavit along with in chief in affidavit of 5 (five) other witnesses. Thereafter, Rejia Bibi w/o- late Ragu Seikh mother of Aminul Haque filed one petition on 29/05/17 u/o-I Rule 10 (2) read with section 151 of the CPC with a prayer to add her as petitioner 1<sup>st</sup> party which learned ADM took up on 21/08/17 and vide order dated 21/08/17, learned ADM, Nalbari passed order and Rejia Bibi is added as 1<sup>st</sup> party/ petitioner with Aminul and by the same order declared possession in favour of the 1<sup>st</sup> party Aminul and Rejia Bibi. Against the said order present revisionist being highly aggrieved and dissatisfied preferred revision petition before this court which was registered and numbered as Crl Revision Case No. 49/17 and my learned predecessor after hearing the counsel for the parties disposed off the Crl Revision case No. 49/17 partly allowing the revision and remand back the case with a direction to the learned ADM, Nalbari to give opportunity to the 2<sup>nd</sup> party to cross examine the witnesses of the 1<sup>st</sup> party and to adduce evidence as well

as chance of hearing and then to finally dispose of the case in accordance with law within three months.

7. On receipt of the case record from revisional court, learned ADM, Nalbari fix the case for cross examination of 1<sup>st</sup> party witness and at this time Aminul Haque and Rejia Bibi filed a petition on 23/07/18 stating that disputed land allotted to Rejia Bibi which is covered by touzi patta No. 1614 dag No. 1(old)/ 136 (new) by the Government. 2<sup>nd</sup> party trying best to sale the disputed land to 3<sup>rd</sup> party and 2<sup>nd</sup> party threatened and intends to dispose the suit land and tin chali with a view to cause wrongful loss to 1<sup>st</sup> party. This petition was taken by learned ADM, Nalbari on 24/07/18 and learned ADM, Nalbari vide his order dated 24/07/18 passed order directing the 2<sup>nd</sup> party not to sell the tin chali standing over the disputed land otherwise legal action will be taken against 2<sup>nd</sup> party. Also O/C, Sialmari PS is directed to attach the disputed land u/s-146(1) CrPC and to lock the 5 (five) numbers of room (tin chali) standing over the disputed land until further order.

8. On careful scanning of the entire record, it is revealed that learned ADM, Nalbari without giving an opportunity of being heard and without calling for a written reply from the 2<sup>nd</sup> party, took up the petition on off date without serving notice to the 2<sup>nd</sup> party and passed the impugned order of 24/07/18. When case was remanded back by the revisionist court with direction to dispose off the case after giving chance to 2<sup>nd</sup> party to cross examine PWs and hearing the parties to the proceeding. The order dated 24/07/18 clearly pointed violation of natural justice and this order was passed while the case was pending for cross examination of 1<sup>st</sup> party and without having supporting documents of the petitioner in the petition regarding proposed selling of the land and when earlier order dated 21/08/17 was set aside by the revisional court. That being the position, the impugned order dated 24/07/18 passed by learned ADM, Nalbari is in violation of law, erroneous and is accordingly set aside.

9. In view of the aforesaid discussion, case is remanded back for fresh trial to the court of learned ADM, Nalbari. Both the parties are directed to appear before the learned ADM, Nalbari within 30 days and the learned ADM Nalbari will dispose of the case in accordance with law after giving opportunity of hearing to both the parties to the proceeding.

10. In the light of the above order, Revision petition is allowed. However no costs to the parties.

11. 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 17<sup>th</sup> day of June, 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