

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

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

(Criminal Revision Case No. 39/16)

**Revision against the order dated 08/08/2016 passed by
Learned ADM, Nalbari in connection with Misc Case No.
14^M/15 u/s-145/146(1) of CrPC.**

Sri Pramod Barman

S/o- Kalpa Barman

R/o- Vill- Barkhetri, Barni

P.S.- Belsor

Dist - Nalbari, Assam.....Petitioner

versus

Bapuram Barman

S/O- Lt. Dhireswar Barman

R/o- Vill- Nalisa

P.S.- Belsor

Dist - Nalbari, Assam.....Opp. Party

Advocates appeared:-

For the Revisionist :- Dharendra Nath Barman, Advocate

For the Opp. Party :- None appeared

Date of argument :- 02/06/2020

Date of Judgment :- 12/06/2020

JUDGMENT

1. This revision petition u/s-397/399 of CrPC is filed by Pramod Barman, S/o Lt. Kalpa Barman for setting aside and quash the order dated 08/08/2016 passed by the Learned ADM Nalbari, in connection with case No. 14^m/15 u/s 145/146(1) CrPC.

2. The fact leading to this revision petition is that Bapuram Barman, the opposite party of the present revision as 1st party filed a petition u/s 144/145 CrPC against the present petitioner Pramod Barman before the Learned District Magistrate, Nalbari inter-alia citing that disputed land mentioned in the schedule of the petition measuring 5 bigha 2 katha 4 lecha covered by dag no. 50 of KP patta no. 153 situated at village Nalisha, Mouza Pakowa, under P.S. Belsor of Nalbari district bounded by East Mrigen Barman and other west Jalti Sedegar M.E. School, North Anil Sarmah and other, South Bhagaban Barman is originally owned by Sailendra Ch. Barman and Arup Kr. Barman son of Lt. Ramesh Ch. Barman and petitioner first party Bapuram Barman is cultivating the disputed land since 2009 under an oral contract and written was made on 19/05/2014 by an agreement signed by Notary Public Guwahati and opposite party on 01/02/15 namely Pramod Barman the revisionist prevented him from ploughing the disputed land and threaten to cause physical harm.

3. It is the plea of the first party Bapuram Barman that second party Pramod Barman had no link with the disputed land. He is the pattadar of the disputed patta and having land in other dags and taking advantage of his mutation in respect of other dags of the disputed patta, Pramod Barman trying to dispose him. Hence, filed the petition to maintain social discipline, peace and prays to declare possession in favor of the first party.

4. The Learned District Magistrate Nalbari, entrusted the matter to the learned Addl. District Magistrate, Nalbari who on being satisfied drawn up the proceeding u/s 145 CrPC, issued notice to the parties to appear before the Learned ADM, attached the disputed land and call for the written statement from the other side and fix the case for written statement. It has been argued by the learned counsel for the revisionist that

order passed by the learned ADM is beyond its jurisdiction and learned ADM failed to appreciate the material on record and without hearing the other side passed the impugned order.

5. Pramod Barman, the second party i.e. present revisionist on receipt of the notice appeared before the court of Learned ADM Nalbari, and submitted his written statement, denied the allegation of the first party and prays for dismissal of the case and prays to withdraw the attachment. The second party Pramod Barman in his written statement stated that the disputed land is his ancestral property which he is possessing from his forefathers days and first party Bapuram Barman tried to sell the land and applied for sale permission after purchasing the land from the son of Lt. Ramesh Barman and in view of his objection dated 24/01/2014 before the Circle Officer Nalbari, Chamata, Bapuram Barman did not get the sale permission and on failure to sale the land, first party obtained one agreement from the sons of Lt. Ramesh Barman and using the same as sword to take illegal possession of the land. The disputed land was never possessed by first party or Sailendra Barman and Arup Ch. Barman son of Lt. Ramesh Barman and disputed land is possessed by answering second party Pramod Barman.

6. Learned ADM after receiving the written statement from the second party Pramod Barman fix the case for hearing on written statement and evidence of first party and then on the petition of Tyaj Ali learned ADM appointed him as the receiver of the attach disputed land, allowed him to cultivate in the scheduled land and to dispose the sale proceed in the Govt, A/c 8443. Thereafter, the Learned ADM again on the prayer of the first party appointed him as receiver and allowed him to cultivate the disputed land and direct him to deposit the sale presented in the Govt. head of A/c 8443 vide impugned order

dated 08/08/2016 and against this impugned order, the second party presented the present revision petition.

7. I have heard Learned petitioner counsel Mr. D Barman. The Learned petitioner counsel made submission that the sale proceed already deposited in the Govt. account and evidence in affidavit has already been submitted and this is a fit case to remand for trial. None represented the second party in virtual court.

8. I have gone through the trial court record. On 11/02/2015 Bapuram Barman as first party filed the petition u/s 145/146(1) CrPC before the Learned District Magistrate, Nalbari with a prayer for drawing up a proceeding u/s 145 CrPC and to attach the disputed land u/s 146(1) CrPC. On the same date Learned ADM took cognizance and on being satisfied drawn up a proceeding u/s 145 CrPC, issued notice to the parties, called for written statement and attached the disputed land u/s 146(1) CrPC. Thereafter, on the prayer of one Taiz Ali, he was appointed as receiver, allowed him to cultivate the land and direct him to deposit the sale proceed in the Govt. A/c 8443. Thereafter, Taiz Ali deposited the amount of Rs. 6,600 in the head A/c '8443' through treasury challan. After that on the petition of the first party on 08/08/2016 which is taken on the 'off date', learned ADM passed order appointing first party Bapuram Barman as receiver and allowed him to cultivate the disputed land and direct him to deposit the sale proceed in the head of A/c 8443 which lead to filing of this revision petition. The material on record pointed case is at the stage of evidence and order dated 08/08/2016 was passed without hearing the other side and calling their written reply on the aforesaid petition. As such the order dated 08/08/2016 is bad in law and is accordingly set aside. The case is at evidence stage, possession is not yet determined and this is a fit case for remand. Accordingly, case is remand back for fresh

trial. Both parties are directed to appear before the learned trial court within 40 days from the date of order of this court and Learned ADM will dispose off Case No. 14(M)/15 u/s-145/146(1) CrPC as per provisions of law after giving the parties to the proceeding due hearing.

9. In the light of above direction, revision allowed. However, no cost to the parties.

10. 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 12th 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:
Anzima Brahma
Stenographer Gr. III