

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

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

**(Criminal Revision Case No. 40/16)**

**Revision against the order dated 08/08/16 passed by  
learned ADM, Nalbari in connection with Misc Case No.  
38<sup>M</sup>/2015 u/s- 145/146(1) of Cr.P.C.**

**Sri Pramod Barman**

S/o- Late Kalpa Barman

R/o- Vill- Berkhetri Barni

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

-Versus-

**Sri Bapuram Barman**

S/o-Lt Dhireswar Barman

R/o- Vill- Nalisa, P.S.-Belsor

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

**Advocates appeared:-**

For the Revisionist :- Mr. Dharendra Nath Barman, Advocate

For the Opp. Party :- None appeared.

Date of Argument :- 02/06/2020

Date of Judgment :- 12/06/2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/399 CrPC by 2<sup>nd</sup> party revisionist Pramod Barman being highly aggrieved

and dissatisfied with the order dated 08/08/16 passed by learned ADM, Nalbari in Misc. Case No. 38<sup>M</sup>/2015 u/s-145/146(1) CrPC whereby learned ADM, Nalbari appointed 1<sup>st</sup> party as receiver to cultivate the disputed land for the sali season and 1<sup>st</sup> party is directed to deposit the sale proceed through treasury challan under H/A "8443" and the receiver would auction the crops in presence of local gaonburah and receiver would deduct the cultivating and harvesting costs from the total sale proceed.

2. Fact leading to the revision is that 1st party Bapuram Barman filed a petition before the learned ADM, Nalbari against 2<sup>nd</sup> party Pramod Barman stating that 2<sup>nd</sup> party is a cheater, and greedy person and 1<sup>st</sup> party is possessing the scheduled land situated at Nalisa village under Pakowa Mouza covered by dag No. 350, patta no. 153 measuring 5 bigha 2 katha 4 lechas bounded by North- Anil, East-Late Baikuntha Barman, West-Sailen, Arup Barman and South- Bhagawan Barman and he has payed the revenue of the land regularly and 2<sup>nd</sup> party has no any possession over the land and due to his greedy nature he tried to dispossess the 1<sup>st</sup> party and there is a likelihood of breach of peace in the locality. It has been stated that 2<sup>nd</sup> party after taking Rs. 80,000/- from 1st party, handed over the possession to 1<sup>st</sup> party and the land was taken from the original pattadar and from then 1<sup>st</sup> party is using the land for cultivation and harvesting crops there and 2<sup>nd</sup> party is trying to restrain the 1<sup>st</sup> party from cultivation. Learned ADM, Nalbari vide order dated 10/04/15 registered Misc Case No. 38<sup>M</sup>/15, drawn up a proceeding u/s- 145 CrPC, issued notice to the both the parties and passed order of attachment of the land u/s- 146(1) CrPC covered by the aforesaid dag and patta in favour of 1st party Bapuram Barman against which 2nd party preferred this revision petition.

3. Opposite party i.e. present revisionist Pramod Barman made his appearance before the learned ADM, Nalbari, submitted his written statement, denied the case of the 1st party made in his petition u/s- 145 CrPC and stated that 1st party was trying to sell the land of other pattadar Sailen Barman and Arup Barman, both are sons of Late Ramesh Barman applied for permission before the appropriate authority and that land is under the possession of 2nd party from the day of Late Ramesh Barman and 2nd party is paying the costs of the land and Sailen and Arup Barman told 2nd party to sell the land to him and 1st party prays for permission before the circle officer, to that 2<sup>nd</sup> party filed objection and that is why 1<sup>st</sup> party illegally made an agreement with mother of Sailen Barman and Arup Barman and possessed the land by registering a case vide Misc Case No. 14<sup>M</sup>/15. The disputed land is under possession of Renuka Barman, Mrigen Barman and Parthapratim Barman and as Mrigen and Parthapratim are mentally weak, the whole land was looked after by Renuka Barman and Renuka Barman stayed at Newyork and she gave right upon the 2nd party to look after the land and 2nd party is the own uncle of the pattadars.

4. 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, Nalbari without giving an opportunity of being heard to the 2<sup>nd</sup> party/ revisionist passed the impugned order and learned ADM, Nalbari failed to appreciate the statement of the revisionist made in his WS and learned ADM failed to appreciate material on record in the right manner.

5. I have perused the case record. In the case in hand 1st party Bapuram Barman filed the petition on 10/04/15 before the

learned District Magistrate, Nalbari which is forwarded to learned ADM, Nalbari for action and learned ADM, Nalbari drawn up a proceeding u/s-145 CrPC and the disputed land was attached on 10/04/15 fixing 05/05/15 for written statement of 2nd party and report and present revisionist made his appearance before the learned ADM, Nalbari and he submitted his written statement on 05/06/15. Learned ADM, Nalbari vide order dated 06/07/15 passed an order to appoint Taiz Ali as receiver and he is allowed to cultivate in the disputed land and Taiz Ali deposited the proceed money vide challan no. T/5406 on 30/05/16 and thereafter, learned ADM, Nalbari passed an order on 08/08/16 based on the petition dated 05/08/16 submitted by 1<sup>st</sup> party Bapuram Barman where in he stated he was willing to appointed as receiver for cultivating the disputed land and he was appointed as receiver in the disputed land.

6. The material on record pointed case is at the stage of evidence and order dated 08/08/16 was passed without hearing the other side and calling for their written statement. As such order dated 08/08/16 is erroneous and defective and case is at the stage of cross of parties and possession have not been determined and this is a fit case for remand and accordingly, the order dated 08/08/16 passed by learned ADM, Nalbari in Misc Case No. 38<sup>M</sup>/15 u/s-145/146(1) CrPC is set aside.

7. 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 40 days from the date of order of this court and the learned ADM, Nalbari will dispose of the case in accordance with law after giving opportunity to the parties of being heard.

8. In the light of the above order, Revision is allowed. However no cost to the parties.

9. 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 12<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