

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

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

**(Criminal Revision Case No. 64/16)**

**Revision u/s- 397/399 CrPC against the order dated  
13/10/2016 passed learned ADM, Nalbari in  
connection with Case No. 97<sup>M</sup>/2015 u/s- 147 CrPC.**

**Sri Girindra Nath Sarma**

S/o- Late Bangsinatha Sarma

R/o- Punnasram, Ward No.7, Nalbari Town

P.O. & PS- Nalbari

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

-Versus-

**Sri Haren Sarma**

**Sri Jiten Sarma**

S/o- Late Ramanath Sarma

R/o- Punnasram, Ward No.7, Nalbari Town

P.O. & PS- Nalbari

Dist - Nalbari, Assam ..... Opp Party/ 2nd party

**Advocates appeared:-**

For the Revisionist : Hiteswar Lahkar, Advocate.

For the Opp. Party : None appeared

Date of argument : 15-06-2020

Date of judgment : 26-06-2020

**JUDGMENT**

1. The instant revision has been preferred u/s-397/399 CrPC by Sri Girindra Nath Sarma being aggrieved with the impugned order dated 13/10/2016 passed by learned ADM, Nalbari in connection with Case No. 97<sup>M</sup>/15 u/s- 147 CrPC.

2. Fact leading to the revision petition is that Revisionist Sri Girindra Nath Sarma filed a petition before the learned ADM, Nalbari stating that the land vide patta No. 52, dag No. 198 had been shared amongst Kameswar Sarma, father of 1<sup>st</sup> party Late Bangshi Nath Sarma and father of 2<sup>nd</sup> party late Rama Sarma and they kept a road measuring 100feet X 8 feet for passage of all the parties in the said land. 1<sup>st</sup> party is possessing their share of land in the north side of the said road and 2<sup>nd</sup> party has been possessing their share of land in the south side of the said road. On 28/04/2014 2<sup>nd</sup> party unlawfully possessed 100 feet X 6 feet of land out of 100 feet X 8 feet road and put bamboo fencing as a result of which passage of the 1<sup>st</sup> party and his family has been blocked. When 1<sup>st</sup> party resisted the 2<sup>nd</sup> party for their unlawful possession over the disputed land, 2<sup>nd</sup> party gave threatening to the 1<sup>st</sup> party and his family members to finish their life.

3. On receipt of the petition learned ADM, Nalbari started a proceeding u/s- 147 CrPC vide Misc Case No. 97<sup>M</sup>/15, issue show cause notice to the 2<sup>nd</sup> party and call for a spot inquiry report from the Circle Officer, Nalbari. Thereafter, opposite party submitted W/S and revisionist submitted in-chief in affidavit of three witnesses. Finally, vide order dated 13/10/2016 learned ADM, Nalbari dropped the proceeding citing that revisionist has failed to produce their witnesses for cross examination after giving numbers of chances. Being highly aggrieved with the impugned order dated 13/10/2016 passed by the learned ADM, Nalbari revisionist has preferred this revision.

4. Revisionist is represented by his engaged counsel. I have heard learned revisionist counsel in the virtual court

through Jitsi platform and scrutinized the revision petition as well as case record of the learned trial court to arrive at a just decision.

**5. Points for determination**

- i) Whether learned trial court has dropped the proceeding u/s- 147 CrPC without giving opportunity to the petitioner to adduce his evidence as per provisions of law?

6. Learned counsel appearing for the revisionist made submission that petitioner has submitted evidence of three witnesses and the case was posted on 13/10/2016 for cross examination of witnesses. On 13/10/2016 petitioner was present before the learned trial court yet learned trial court without giving opportunity of being heard dropped the proceeding and prays to set aside the impugned order passed by the learned trial court.

7. I have scrutinized the revision petition, main complaint petition filed u/s- 147 CrPC and trial court case record. On scrutiny of the trial court case record it is seen that on 29/07/2015 learned ADM, Nalbari, base on the petition filed u/s-147 CrPC by the revisionist, directed the 2<sup>nd</sup> party to remove the bamboo fencing from the disputed land and show cause as to why this order should not be made absolute and posted the case on 05/18/15 for show cause reply by the 2<sup>nd</sup> party. On 04/08/2015 2<sup>nd</sup> party submitted show cause reply and learned trial court call for a report from the Circle Officer, Nalbari along with Land Record and stayed earlier order with regard to removal of fencing from the disputed land. On 08/09/2015, 2<sup>nd</sup> party submitted a petition stating that the report of Land Record officials is not correct

and learned trial court directed the Supervisor Kanungo to submit a report along with spot photograph. On 30/11/15 2<sup>nd</sup> party submitted W/S. On 16/02/16 1<sup>st</sup> party submitted in chief in affidavit of 3 witnesses and the case is posted on 14/03/2016 for cross of 1<sup>st</sup> party. On 14/03/2016, 25/04/2016, 09/05/2016, 09/06/2016, 26/07/2016, 30/08/2016 & 14/09/2016 1<sup>st</sup> party has failed to produced their witnesses before the learned trial court for cross examination. Ultimately on 13/06/2016 learned trial court has dropped the proceeding holding that 1<sup>st</sup> party has no interest to proceed with the case. Case record shows that learned trial court has given enough time to the 1<sup>st</sup> party to adduce their evidence but first party caused delay to the proceeding. However, I deem it proper that 1<sup>st</sup> party should get one more chance to adduce their evidence for the end of justice.

8. In view of the above discussion, the revision is allowed with cost of Rs. 2,000/-. The cost be paid to the respondent/ 2<sup>nd</sup> party. Learned trial court shall give only one opportunity to the revisionist/ 1<sup>st</sup> party to bring his witnesses to face cross examination and with this direction the case is remanded back to the learned trial court to resume trial where it stopped.

9. Revisionist is directed to appear before the learned trial court within 30 days from today and to take step. It is further ordered that if revisionist/ 1<sup>st</sup> party fails to bring his witnesses within 60 days from the date of direction of the learned trial court, learned trial court is at liberty to dispose of the case as per procedure.

10. Send down the trial court record with a copy of this court judgment to the learned trial court immediately.

11. Judgment delivered under hand and seal of this court on this 26<sup>th</sup> day of June, 2020 at Nalbari, Dist-Nalbari.

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Dictated & corrected by me

(Smti S. Bhuyan)  
Sessions Judge, Nalbari.

Typed by:  
Jitumani Talukdar,  
Computer Typist