
(2002) 01 AHC CK 0130

Allahabad High Court

Case No: Criminal Revision No. 312 of 1992

Nilima Barman

APPELLANT

Vs

Ratima Barman

RESPONDENT

Date of Decision: Jan. 11, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145, 482

Hon'ble Judges: R.S.Mongia, J

Final Decision: Allowed

Judgement

1. Heard Mr. G. P. Bhowmik, learned counsel for the petitioner. Nobody has put in appearance on behalf of the respondent. Smt. Ratima Barman.

2. This petition has been filed under Section 482 of the Criminal Procedure Code, which arises under the following facts and circumstances.

3. The respondent, Smt. Ratima Barman, had moved an application under Section 145 of the Cr.P.C. before the Deputy Commissioner, Kamrup (Executive Magistrate, Guwahati) on 10/7/1989 against Smt. Nilima Barman (now petitioner). It was averred in the petition before the Executive Magistrate that the petitioner before the Executive Magistrate, i.e., Smt. Ratima Barman, is the wife of late Krishna Ram Barman and coowner of a plot of land measuring 1 Bigha 3 Kathas 9 Lechas, covered by Patta No. 235, Dag No. 933, in village Signimari Mouza Pub Bengshor, and further alleged that she was in possession of the said land till 15/5/1989. She was away from her house on 15th and 16th May, 1989. On 17/5/1989, when she returned, she found that the 2nd party, i.e. the present petitioner, Smt. Nilima Barman had constructed a house on the land aforesaid, even though she had no right, title or interest over the said property. Despite requests, the 2nd party i.e. the present petitioner, had refused to vacate the land in question. The matter was brought before the Singimari Gaon Unayan Samity, which deliberated upon the matter on 21/5/1989, but the efforts of the said Samity failed. An ex parte order was passed on 10/7/1985 by the Executive Magistrate drawing up a

proceedings under Section 145, Cr.P.C. and an order of attachment of the land mentioned in the Schedule to the order was passed asking the parties to appear before him on 27/7/1989. The order was that "in view of the emergency the disputed land mentioned in the schedule is hereby ordered to be attached under Section 146, Cr.P.C. prohibiting entry of both the parties excluding dwelling houses ingress and egress to it." The schedule of the property is as follows :

"The entire land of patta No. 235 Dag No. 933 Village Singimari, Mouza Pub Bongsher, P.S. Haje excluding the house and its ingress and egress."

4. After both the parties appeared, an order was passed by the Executive Magistrate on 10/4/1992, inter alia, holding that the 2nd Party, i.e., the present petitioner, had forcibly occupied the land in dispute and in fact the 1st party was in possession before she was dispossessed forcibly by the present petitioner (2nd party before the Executive Magistrate). The concluding portion of the final order reads as under :

"The first party shall enjoy the possession over the disputed land till a competent Court passes order and/or otherwise evicting the first party from the land in the process of law. The second party is prohibited from causing any sort of interference in peaceful possession and enjoyment of the disputed land by the first party, O.C., Haje P.S. shall put the first party into the possession of the land shown below by removing man and materials therefrom.

Inform O.C. Hajo P.S. for the execution of the order and to report compliance.

Given under my hand and seal of this Court on this 10th day of April, 1992."

5. Against the aforesaid order, the 2nd party, i.e. the present petitioner, filed a revision petition under Section 397/399, Cr.P.C. before the Additional Sessions Judge, Kamrup. However, the same was dismissed on 30th March, 1995, holding that the Executive Magistrate had come to the conclusion after appreciating the evidence and the same did not call for any interference in revision petition.

6. The learned counsel for the petitioner argued that though second revision is not maintainable under the Cr.P.C. against the order of the Addl. Sessions Judge, yet, he submitted that the present petition was filed under Section 482, Cr.P.C. inasmuch as, on the evidence of the complainant petitioner before the Executive Magistrate, no case for invoking the powers under Section 145/146, Cr.P.C. had been made. He has taken me through the evidence, which he has put on record as also the petition filed by the respondent (the first party before the Executive Magistrate). He argued that admittedly the petitioner was a co-owner in the entire land mentioned by the petitioner (first party). Even if without partitioning the land the petitioner constructed on some portion of the land, it did not debar the present petitioner (the 2nd party before the Executive Magistrate) to make any construction. Moreover, he referred to the evidence of PW 1 wherein the said witness stated that the 2nd party (the present petitioner) was staying on the disputed land

by constructing house from about 8/10 years back. According to the petitioner's counsel, it is not only the question of mis appreciation of evidence but in fact, it is a case where there is no evidence regarding the present petitioner having encroached upon any land belonging to the petitioner before the Executive Magistrate.

7. When this revision petition was admitted, even at the stage nobody had appeared for the respondent (the 1st party before the Executive Magistrate) and even today, none has appeared to oppose this petition. The Motion Bench had ordered that the status quo regarding possession be maintained between the parties.

8. After hearing the learned counsel for the petitioner, I am of the view that this is a fit case in which jurisdiction under Section 482, Cr.P.C. should be exercised by this Court, inasmuch as, I am of the opinion that there is no evidence to come to the conclusion as arrived at by the Executive Magistrate. If the present petitioner is a coowner, then she is a coowner on each inch of the land owned by the two coowners and in that eventuality, the question of invoking the provisions under Section 145, Cr.P.C. would not arise.

9. For the foregoing reasons, I accept the revision petition and quash the order of the Executive Magistrate, dated 10/4/1992, as also the order of the Additional Sessions Judge, Kamrup, dated 30/3/1995. The record of the Sessions Court, which has been received, be sent back.

Revision allowed.