(2012) 2 GLD 407

Gauhati High Court

Case No: Criminal Petition No. 490 of 2011

M/s. Tirual Bortimon Tea Estate Pvt. Ltd. and another		APPELLANT
	Vs	
Shri Tipeswar Gogoi and others		RESPONDENT

Date of Decision: Feb. 21, 2012

Acts Referred:

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

Citation: (2012) 2 GLD 407

Hon'ble Judges: Ujjal Bhuyan, J

Bench: Single Bench

Advocate: J. Ahmed, for the Appellant; R.K. Borah, for the Respondent

Final Decision: Allowed

Judgement

Ujja Bhuyan, J.

The petitioners are the owners of a tea estate called M/s. Bortimon Tea Estate situated at Sapekhati mouza under Sonari Revenue Circle in the district of Sivasagar, Assam. Land measuring 47 bighas covered by Dag Nos. 3, 102, 105, 106 and 109 under Periodic Parte Nos. 43, 4, 6, 7 and 8 of village No. 2 Garakhiabam Gaon under P.S. and Mouza-Sapekhati, Sonari Revenue Circle falls within the aforesaid tea estate. The petitioners claim to be in possession of the aforesaid tea estate including the land in question since the year 1961. Alleging that the respondents were trying to encroach upon the aforesaid land in question falling within the M/s. Bortimon Tea Estate, the petitioners instituted a civil suit being Title Suit No. 5 of 2007 in the Court of the learned Munsiff at Charaideo. The present respondent Nos. 1 to 4 and few others have been arrayed as the defendants in the said suit. The relief claimed in the suit is for a decree for declaration of their right, title, interest and possession over the suit land and also for a decree of permanent injunction restraining the defendants from entering into the suit land. The

schedule of the suit land given in the plaint is as under:

SCHEDULE OF THE SUIT LAND

All that piece and Plots of Lands measuring more or less 47 (Forty Seven) bighas covered by Dag Nos. 3, 102, 105, 106, 109 and Dag Nos. 3 of Cadastral No. 2 Garakhiabam Gaon under Sapekhati Mouza, Sonari Revenue Circle & Sub Division Charaideo, District Sivasagar, Assam, and particularly covered by section Nos. 17, 18 of M/s. Bortimon Tea Estate, and bounded as under :--

North : The boundary Fencing towards the Tea Garden, of Mr. Rajib Saikial/Low land.

South : Plaintiff''s said Bortimon Tea Estate.

East: Plaintiff''s said Bortimon Tea Estate.

West : Plaintiff''s said Bortimon Tea Estate.

The said suit was filed on 7-4-2007 and is presently pending.

2. It appears that the respondent Nos. 1 to 4 thereafter filed a petition dated 7-6-2007 before the learned Sub-Divisional Magistrate, Charaideo against the petitioner No. 1 as the opposite party alleging that the concerned Circle Officer had directed both the parties not to send workers, employees, staff etc. into the schedule land but disobeying such direction, the Opp. Party had sent labourers into the land in question, thereby giving rise to apprehension of breach of peace and tranquility. Prayer was made for issuing directions to the Opp. Party not to send any worker, labourer etc. into the disputed land and to implement the order through the police. The schedule of the land given in that petition is an under:

SCHEDULE OF THE LAND

Mouza Sapekhati

Village-2 No. Gorokhiabam

P.P No. 43, 4, 6, 7 and 8.

Dag No. 102, 105, 106 and 109.

Pattadars-1. Tipeswar Gogoi,

2. Bimala Phukan,

3. Dimbeswar Gogoi,

4. Nogen Bora,

5. Dhrubajyoti Handique.

3. As can be seen from the above, neither the area of the land has been mentioned nor a proper description thereof has been given. Therefore, the land alleged to be disputed in that petition is not definite and is extremely vague.

4. The aforesaid petition was registered as Misc. Case No. 3 of 2007. The learned Sub Divisional Magistrate, Charaideo by order dated 10-7-2007 held that there was every chance of apprehension of breach of peace and tranquility regarding possession of the land between the two parties and initiated a proceeding u/s 145, Cr PC Since the schedule land comprises of tea bushes, the learned Magistrate appointed one Sri Jadumani Konwar (Respondent No. 5 herein) as the third party to pluck tea leaves and to maintain the tea plants. By the said order, the learned Magistrate directed the third party to sell the tea leaves in the market and to deposit the sale proceeds in the treasury every month and also to deposit Rs. 2000/- every year before the learned Magistrate.

5. In the meanwhile, in the injunction petition filed by the petitioners in Title Suit No. 5 of 2007, which was registered as Misc. (J) Case No. 18 of 2007, the learned Munsiff, Charaideo passed an order dated 17-07-2007 directing both the parties to maintain status quo in respect of the suit land.

6. The petitioner No. 1 also filed a revision petition against the order dated 10-7-2007 passed by the learned Sub-Divisional Magistrate, Charaideo in Misc. Case No. 3 of 2007. The said revision was registered as Criminal Revision No. 39(4) of 2007. By the judgment and order dated 13-11-2009, the learned Addl. Sessions Judge (FTC), Sivasagar remanded the matter back to the learned Sub-Divisional Magistrate, Charaideo with a direction to proceed with the case from the stage of issuing notice to the parties inviting written statement.

7. Thereafter, the first party i.e., the respondent Nos. 1 to 4 moved the learned Sub-Divisional Magistrate, Charaideo with the prayer that in view of the status quo order passed by the learned Munsiff on 17-7-2007 in the civil suit, the proceedings u/s 145, Cr PC should be kept in abeyance till disposal of the suit. The learned Sub-Divisional Magistrate, Charaideo by the order dated 22-4-2010 decided to keep the proceeding in Misc. Case No. 3 of 2007 pending till disposal of the matter by the Civil Court.

8. It appears that thereafter the second party in Misc. Case No. 3 of 2007 filed a petition dated 24-1-2011 alleging that Sri Jadumani Konwar (respondent No. 5 herein) was acting as an agent of the first party to the detriment of the second party and in this connection mentioned about certain instances. The learned Magistrate on the same date that is on 24-1-2011 removed Sri Jadumani Konwar as the receiver with a direction to him to deposit the entire outstanding amount. Considering the petition of one Sri Krishna Banik, the learned Magistrate gave the custody of the disputed land to the said Sri Krishna Banik as the third party till the disposal of tile civil suit with certain conditions.

9. The respondent Nos. 1 to 4 thereafter filed Criminal Revision No. 13(1) of 2011 in the Court of the learned Sessions Judge, Sivasagar challenging the legality and correctness of the aforesaid order dated 24-01-2011. By order dated 30-3-2011, the learned Sessions Judge admitted the revision petition for hearing and stayed the order dated 24-1-2011 till the disposal of the revision petition.

10. The petitioner No. 1 thereafter moved this Court by way of Criminal Petition No. 233 of 2011 assailing the aforesaid order dated 30-3-2011. This Court by the final order dated 15-6-2011 disposed of the said criminal petition with a direction to the petitioner to file an application for modification, alteration etc. of the order dated 30-3-2011 which should be considered and disposed of after hearing all the parties, further directing that the interim order passed would continue till the disposal of the petition by the learned revisional Court below.

11. As directed by this Court, the petitioners filed a petition before the learned revisional Court below for modification of the order dated 30-3-2011. But because of some procedural complications, the said petition could not be disposed of within the stipulated period. Therefore, as agreed to by both the sides, the learned Court below took up the revision petition itself for final hearing and disposal.

12. The learned revisional Court below by the judgment and order dated 19-7-2011 allowed the revision petition by setting aide the order dated 24-1-2011, directing the Opp. Party to obtain order for appointment of receiver from the Civil Court in Title Suit No. 5 of 2007.

13. The petitioners by way of this present application filed u/s 482, Cr PC has challenged the legality and validity of the aforesaid judgment and order dated 19-7-2011 passed in Crl. Rev. No. 13(1) of 2Q.11 and also for declaring the various orders passed in Misc. Case No. 3 of 2007 as null and void.

14. Heard Mr. J. Ahmed, learned counsel for the petitioners. Also heard Mr. R.K. Bora, learned counsel for the respondents.

15. Mr. Ahmed, learned counsel for the petitioners submits that when the civil suit on the same subject-matter is pending, the proceedings initiated by the learned Magistrate u/s 145, Cr PC should be closed. On the other hand Mr. R.K. Bora learned counsel for the respondents submits that there is no infirmity in the order passed by the learned revisional Court below. According to him, the order dated 24-1-2011 was passed by the learned Magistrate without hearing the first party, or the earlier receiver appointed. He, therefore, submits that the learned revisional Court below had rightly set aside the order dated 24-1-2011 directing the Opp. Party to move the Civil Court for appointment of receiver.

16. The purpose of Section 145, Cr PC is to prevent breach of peace, to decide as to who was in possession in fact on the date of the preliminary order and to settle the matter

temporarily by maintaining the status quo until the rights are determined by a competent Court A proceeding u/s 145, Cr PC is primarily concerned with the prevention of breach of peace by declaring the party found in possession to be entitled to remain in possession until decided otherwise by a competent Court. The duty of the Magistrate is not to go into questions of title but to meet the urged the situation by maintaining the party in possession. A proceeding u/s 145, Cr PC is purely of a preventive and provisional nature, the purpose being to maintain peace and tranquility. The executive machinery has to act with speed and haste to maintain peace. The inquiry is limited to the question as to who was in actual possession on the date of the preliminary inquiry irrespective of the rights of the parties.

17. Though there is no time limit prescribed for disposal of a proceeding u/s 145, Cr PC, considering the very nature of such proceeding, it should not be allowed to be dragged on for a long time.

18. Moreover, in a case where a civil suit is instituted and is pending for possession or for declaration of title in respect of the same property, in the opinion of this Court, proceeding u/s 145, Cr PC should not be allowed to continue inasmuch as the Civil Court is competent to decide the question of title as well as possession between the parties. The criminal Court should not be allowed to invoke its jurisdiction when possession is being examined by the Civil Court and the parties are in a position to approach the Civil Court for interim orders such as injunction or appointment of receiver for adequate protection of the property during the pendency of the dispute. Parallel proceedings should not continue in such situations as multiplicity of litigation should be avoided. The Apex Court in the case of Amresh Tiwari v. Lalta Prasad Dubey and another, reported in AIR 2000 SC 1504 held that in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the Civil Court, then proceedings under Sections 145, Cr PC should not be allowed to continue as because the Civil Court is competent to decide the question of title as well as possession between the parties and the orders of the Civil Court would be binding on the Magistrate. Therefore, I am of the considered opinion that when a Civil Court is in seisin of the same subject-matter, proceedings u/s 145, Cr PC should be terminated.

19. Coming to the facts of this case, it is seen that the first party i.e. respondent Nos. 1 to 4 herein had themselves moved the learned Sub-Divisional Magistrate, Charaideo to keep the proceeding of Misc. Case No. 3 of 2007 pending in view of the status quo order passed by the Civil Court. The learned Magistrate also by his order dated 22-4-2010 agreed to that prayer and decided to keep the proceeding of Misc. Case No. 3 of 2007 pending till the disposal of the matter, by the Civil Court.

20. The aforesaid step taken by the first party is not very difficult to understand. The learned Magistrate in the proceeding u/s 145, Cr PC had appointed the respondent No. 5 as the receiver of the disputed land. When the Civil Court thereafter passed the status

quo order, which meant that the respondent No. 5 would continue to be the receiver of the property, the said situation clearly appeared to be favouring the first party. As has been noticed above, in the petition filed by the first party for initiating proceeding u/s 145, Cr PC, the schedule of the land has not been properly described, clearly leaving room for mischief, though admittedly the disputed land in the proceeding u/s 145, Cr PC and in the civil suit is the one and the same. Subsequently, the second party got the aforesaid position reversed by getting an order from the learned Magistrate removing the earlier receiver and appointing another person as the receiver, apparently of their choice.

21. It is thus evident that the proceeding u/s 145, Cr PC that is Misc. Case No. 3 of 2007 has now become a tool in the hands of both the parties to be used and misused as and when it would suit them. This is not the purpose of Section 145, Cr PC. Moreover, the said proceeding is continuing for about 5 years now, with the end nowhere in sight.

22. On the other hand, the Civil Court is in seisin of the same matter and had passed a status quo order. From the documents on record, it is seen that the respondents herein, who are the defendants in the civil suit, have filed their written statement-cum-counter claim on 6-4-2009. As noticed above, I am of the opinion that when the Civil Court is in seisin of the same matter, the proceeding u/s 145, Cr PC in respect thereof should not be allowed to continue as a parallel proceeding. If it is allowed, there would be every possibility of the proceeding u/s 145, Cr PC being used and misused, as in the present case, which would be an abuse of the process of the Court.

23. Considering the above, I am of the view that it would be in the interest of justice to direct termination of the proceeding in Misc. Case No. 3 of 2007 pending before the learned Sub Divisional Magistrate, Charaideo. Accordingly, the said proceeding and all the orders passed therein are hereby quashed. The parties are at liberty to approach the learned Munsiff, Charaideo in the pending Title Suit No. 5 of 2007 for necessary orders, if so advised.

24. Criminal petition stands allowed as indicated above. No cost.