
(1994) 09 GAU CK 0016

Gauhati High Court

Case No: Criminal Revision No. 427 of 1993

Banamali Deka

APPELLANT

Vs

Upendra Nath Das

RESPONDENT

Date of Decision: Sept. 28, 1994

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 133, 145, 145(1), 145(4), 399(1)

Citation: (1995) 1 GLR 77

Hon'ble Judges: J. Sangma, J

Bench: Single Bench

Advocate: K.P. Pathak, B.N. Das and K. Baruah, for the Appellant; C.K.S. Baruah and J. Phukan, for the Respondent

Judgement

J. Sangma, J.

The first party in a proceeding u/s 145 Code of Criminal Procedure has brought this revision from the order dated 18.8.93 passed by Shri M.M. Sarkar, Sessions Judge, Barpeta, in Criminal Motion No. 21(B-1) of 1993 setting aside the order dated 29.1.93 passed by Sri T. Barua, Additional Deputy Commissioner, Barpeta, in Misc. Case No. 118m/86 by which he directed the first party to amend his complaint and also quashed the entire proceeding.

2. The first party, Banamali Deka, filed a complaint, on 14.7.86 in the Court of Additional D.C. Barpeta. In that complaint he stated that he was possessing land (3B) at village Dameraboa, He described the Schedule of 3 Bigha, which he possessed thus:

Dag No. 111 of KP Patta No. 35, Village Damerabowa, mouza Nagaon, 3 bighas of land out of 13B 17 Ls. On western side.

3. He complained against the second party for starting a construction on sarkari land which lies in front of his 3 bigha land alleging that the construction would

cause great inconvenience to him. Alleging that there was apprehension for breach of peace, he prayed that proceeding be drawn u/s 145 Code of Criminal Procedure that the land be attached and its possession be delivered to him. There was no schedule of the disputed land.

4. The Addl. DC. (Executive Magistrate), Barpeta, registered the complaint as Misc. Case No. 118m/86 and passed preliminary order drawing up a proceeding u/s 145(1) and though there was no schedule of the land, he ordered the police to attach it. It is not known, if the police had attached the land. In the written statement the second party stated that he started construction on 4 katha of sarkari land for which he paid revenue and submitted Kabula to SDC. He stated that first party had no possession on this sarkari land. Both parties then examined witnesses. Thereafter the Addl. D.C., by his judgment dated 11.3.92 finally decided the case by declaring possession in favour of the first party.

5. The second party preferred CrI. Motion No. 16 (3-3)/92 before the Sessions Judge, Barpeta. As there was no schedule of the land the learned Sessions Judge by his order dated 13.8.92, remanded the case to Addl. D.C. with direction to dispose of the case afresh by ascertaining the area, dag No. patta No. and four boundaries of the land from the evidence.

6. After the said remand the Addl. D.C. ascertained the land and found that its area was 1 katha and was a part of dag No. 49/50. So, by order dated 29.1.93 he (Addl. D.C.) directed the first party to amend the complaint by preparing a schedule for this land (1K) and annex it to his complaint so that he could give effect to the judgment which he had given earlier on 11.3.92.

7. Against this order dated 29.1.93 of the Addl. D.C, directing first party to give the schedule, the second party preferred another Criminal Motion No. 21 (B-1)/93 before the Sessions Judge, Barpeta. This time the Sessions Judge (Sri M.M. Sarkar) by his order dated 18.8.93 (the impugned order) held that after he had finally decided the case by his judgment on 11.3.92, the Addl. D.C. could not direct the first party to give the schedule. So he set aside the order and also quashed the entire proceeding, i.e., the Sessions Judge set aside also the judgment dated 11.3.92 of the Addl. D.C. declaring possession in favour of the first party. Hence the first party brought the instant revision.

8. Mr. C.K. Sarma Barua, learned Counsel for the Respondent (2nd party) took preliminary objection, contending that after the Code of Criminal Procedure was amended in 1973 the Sessions Judge had been vested with power to finally decide the revision before him so a second revision against the decision of Sessions Judge to High Court is barred by Section 399(3). To support this he placed [Puvvula Abbulu Vs. The State Station House Officer, Law and Order](#), There it is held that u/s 399(1) and (2) of the Code of Criminal Procedure 1973 a full revisional power had been conferred on the Sessions Judge; so a further revision by the same person is barred

by Section 399(3). Section 399(3) Code of Criminal Procedure provides thus:

(3) Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.

From the words "at the instance of such person" it is quite clear that the bar of Section 399(3) is against the party who brought the revision before the Sessions Judge and lost and not against the party against whom the revision was brought and won. So one can understand this legal position even without the aid of an authority. As the first party did not prefer revision before the Sessions Judge the bar of Section 399(3) does not apply to him. Therefore the preliminary objection raised by Mr. Sarma Baruah as to the maintainability of this revision must be overruled.

9. Sub-sections (1) and (4) of Section 145 Code of Criminal Procedure provide as follows:

145. Procedure where dispute concerning land or water is likely to cause breach of peace.- (1) Wherever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claim as respects the fact of actual possession of the subject of dispute.

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under Sub-section (1) in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under Sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under Sub-section (1).

From a plain reading of these provisions it is clear that conditions necessary to pass order under Sub-section (1) of Section 145 are : (1) There must be dispute concerning possession of land, water or boundary thereof, each party claiming that he was in possession of that land or water;

(2) that the dispute is likely to cause breach of peace;

(3) that schedule of the subject of dispute must be known at the time of initiating the proceeding, i.e., at the time of passing order under Sub-section (1). Form No. 26 of the second schedule of Code of Criminal Procedure requires the warrant of attachment to contain the subject of dispute, which means the schedule.

The Magistrate will then enquire and decide:

(i) as to which of the two rival parties was in actual possession of that land or water on the date of passing the order under Sub-section (1) i.e. on the date of preliminary order and decide the case by declaring possession in favour of the party whom he finds to be in possession on that date;

(ii) if he finds that that party was in possession on that date, by forcibly and wrongfully dispossessing the other party within 2 months next before that order, then he will decide the case in favour of the party so dispossessed.

10. Under Sub-section (1) an Executive Magistrate can initiate proceeding: (1) on the basis of police report and (2) on other information. The term "other information" includes a complaint, as in the instant case and his own knowledge. Therefore, where pleading of the first party disclosed that the second party was in possession, it can not be said that there was a dispute for possession of that land. Such a case does not come under the purview of Sub-section (1) and (4); secondly where a proceeding was started on police report which showed that parties were disputing for possession; but the first party subsequently filed written statement admitting the possession of the second party without stating that the second party dispossessed him, then also the case does not come within the purview of Sub-section (1) and (4); so the Magistrate can drop the proceeding at that stage. In other words if the first party does not dispute possession of the second party, mere existence of apprehension for breach of peace does not authorise a Magistrate to apply Section 145.

11. In the instant case the first party's complaint disclosed that second party was in possession of the sarkari land. He did not allege that the second party dispossessed him within two months next before. His objection was that second party's construction on the land which lies in front of his land would cause inconvenience to him and therefore he wants to get the land from the possession of second party. The parties have led evidence. But it is settled law that no amount of evidence can be looked into upon a plea which was never put forward see AIR 1930 57 (Privy Council) (1) [Mansha Ram Vs. Tej Bhan](#), Bhagat Singh v. Jaswant Singh AIR 1966 SC 1861. It is not also the finding of Addl. D.C. in the judgment dated 11.3.92 that the evidence supported the possession of the first party. The allegation made in the complaint of first party would come only u/s 133 Code of Criminal Procedure. Therefore the quashing of the proceeding by the learned Sessions Judge can not be said to be illegal.

12. Mr. K.P. Pathak learned Counsel for the Petitioner firstly contended that the order of Addl. D.C. directing the first party to give the schedule is an interlocutory order; so no revision lay to Sessions Court. Interlocutory order means the order passed before final decision of the case. In the instant case the learned Additional D.C. had finally decided the case by his judgment dated. 11.3.92. So even if the order were to be accepted as "interlocutory" the learned Addl. D.C. had ceased to have jurisdiction to pass such an order. The contention therefore has to be rejected. The second point urged by Mr. Pathak is in any view, the Sessions Judge had the power only to set aside order which was impugned in the revision before him and not to quash the entire proceeding. I can not accept this also because though the Sessions Judge did not have the power of quashing, the order did not result in illegality in view of first party's own pleading and in view of the fact that there was no finding in the judgment dated 11.3.92 of the Addl. D.C. that the first party was in possession on the date of preliminary order.

13. In the result the revision has no merit and is accordingly dismissed.