
(1989) 05 GAU CK 0006

Gauhati High Court

Case No: Criminal Revision No. 406 of 1988

Milan Das

APPELLANT

Vs

Ambika Tea Estate

RESPONDENT

Date of Decision: May 19, 1989

Acts Referred:

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

Citation: (1989) 1 GLJ 477

Hon'ble Judges: S.K.Homchaudhuri, J

Bench: Single Bench

Advocate: P.K.Kalita, A.Wahed, A.H.Saikia, Advocates appearing for Parties

Judgement

In this petition under section 482 Cr. P.C., the petitioner has approached this court for quashing the proceedings under section 145/ 146 Cr. P. C. registered as Misc. Case No. 2/87 pending in the Court of Shri Gajen Hazarika, learned Executive Magistrate, Udalguri.

It appears that, the first party on 11.2.87 filed an application before the Sub Divisional Judicial Magistrate (Executive), Udalguri. alleging that 2nd parties (petitioners and others) in the month of January, 87 illegally trespassed into the land of the first party described in Schedule "A" and illegally occupied an area of land measuring more or less 2 Bighas and built temporary shed /houses thereon and that each of them was illegally/occupying more or less 2 Kathas 2 Lechas of land. Such illegal trespass and occupation caused loss to the Tea Estate and there would be law and order problem and create tension amongst the labourers and there was apprehension of breach of peace. Under the circumstances, it was prayed that the matter should be enquired into and suitable steps be taken to evict the trespassers (2nd party) from the land. In the Schedule "A", description of the land was Total land involved 368 Bighas pertaining to Touzi No. 123 of Nispikheraj Mahal No. 34/49 of

village Sahjambari, Mouza Majekuchi of subdivision, Udalguri, bounded as, EastNishanali village, WestKrishna Susabin Tea Estate, NorthKhusigaon village and South Land of Ambika Tea Estate. The application was transferred in the court of Gajen Hazarika, learned Executive Magistrate and Misc. Case No. 2/87 was registered under section 145/146 Cr. P. C. Learned Magistrate by order passed on the same date on 11.2.87 draw up proceeding under section 145 Cr. P. C. and by the same exparte, in exercise of power under section 146 (1) Cr.P.C. attached the disputed land directing both the parties not to enter into the disputed land. The land in dispute was taken to be the entire land described in the Schedule "A" to the petition. Thereafter, learned Magistrate in consideration of subsequent application of the first party by the expirte order dt. 11.3.87 cancelled the earlier ex parte order dt. 11.2.87, and attached the disputed land as described in the schedule to the 2nd application in exercise of power under subsection 1 of section 146 Cr. P. C. Schedule of the disputed land was shown as below :

Schedule of the Disputed Land.

Land measuring 137 Bighas 2 Kathas 10 lechas covered by Touzi patta Nispikheraj Mahal No. 34/49 dag No. 123 of village Shyamabari, mouza Manikuchi under Tangala Police Station.

Boundary :

North: Kushigam.

South : Road.

East : Land of the garden.

West : Krishna Susaibini village.

The petitioners filed revision petition in the court of learned Sessions Judge, Mangaldoi against the said order passed by the learned Magistrate But the learned Sessions Judge by the impugned order dt. 30.6.88 dismissed the said revision petition.

Learned counsel for the petitioners has submitted that Title Suit No. 13/73 and 18/73 are pending for ejectment of the persons in occupation in respect of the land described in Schedule "A" of the complaint dt. 11.2.87 and that the disputed land of the proceeding being subject matter of T.S.No.13/73 and 18/73, the impugned proceeding under section 145 Cr P.C is incompetent and liable to be quashed.

Learned counsel for the first partyopposite party has submitted that the area and boundary of title suit No.13/73 and 18/73 and area and boundary of the disputed land in the proceeding under lection 145 Cr.P.C. impugned in the petition are not the same. Learned counsel has further submitted that on the materials before it, learned Magistrate having been satisfied that there was apprehension of breach of peace between the parties, which requires drawing up proceeding under section

145 Cr.P.C. and keeping the land in dispute under attachment pending disposal of the proceeding, this court, in exercise of jurisdiction under section 482 Cr.P.C. may not embark into the question as to whether there was sufficient materials or not before the learned Magistrate to be satisfied for drawing up the proceeding.

I have considered the submissions made on behalf of the petitioner as well as the opp. party and I have perused the impugned orders, original complaint and subsequent application filed by the opp. party before the learned Magistrate. Ordinarily, a person dispossessed of property is to approach the Civil Court by filing suit for recovery of possession of the immovable property and in case of threat of dispossession from other part of his land, the aggrieved party can obtain a temporary injunction pending disposal of the suit restraining the defendants from encroaching or dispossessing from other part of the land. Court under CPC has provided adequate relief to a person dispossessed from his land. Proceeding under section 145 Cr.P.C. in respect of dispute of possession of immovable property should be resorted to under exceptional circumstances to maintain law and order and tranquility in the locality when there is likelihood of breach of peace in the locality. This Court in the case of *M. Hussain vs. S. Rahman* reported in 1986 (1) GLR 167 has held that "private dispute between 2 persons which does not disturb law and order or occasion a breach of peace in the locality, the forum for getting relief is the Civil Court of competent jurisdiction" Before taking up a proceeding under section 145 Cr.P.C. the Magistrate must be careful,, cautious, circumspect and slow."

In the instant case, complaint was lodged on 11.2.87 and on the same date on the basis of the complaint, learned Magistrate drew up proceeding under section 145 Cr.P.C. and passed order for attachment of the entire land described in the Schedule A of the petition. On plain reading of the complaint, it appears that,, the grievance of complaint was against alleged dispossession of more or less 2 Bighas of land by the 2nd parties, wherein they allegedly built shed and dwelling houses. There is no specific allegation in the complaint that 2nd parties were threatening to dispossess the first party from the entire area of land measuring 368 Bighas as described in the Schedule "A" to the petition. The complaint simply discloses that illegal occupation in 2 Bighas of land by the 2nd parties had caused apprehension of breach of peace"" between the parties, and for that steps should be taken by the Magistrate to evict the 2nd parties from the land allegedly occupied by them illegally. However, in the impugned order dt. 11.2. 7 entire land of Schedule "A" was taken as the disputed land and that again on the prayer made in subsequent application of the first party disputed land was modified as 137 Bighas 2. Kathas. Besides, it is on record that two Civil Suits numbering 13/73 and 18/73 are pending in the Civil Court in respect of the land falling within the land described in the Schedule "A" to the complaint measuring 368 Bighas. It is apparent from the materials on records that the learned Magistrate simply on the basis of vague and indefinite allegations/statement made in the application dt 11.2.87 has mechanically drawn up the proceeding under section 145 Cr.P.C. without at all applying his mind as to

whether the alleged dispossession of first party from 2 Bighas of land gave rise to the likelihood of breach of peace in the locality and also without ascertaining the actual land in dispute, particularly when two title suits were pending in respect of and falling within the land described in the Schedule "A" to the complaint. That being so, the proceeding drawn up under section 145 Cr.P.C. on the basis of the complaint dt. J 1.2.87 by the first party opposite party is arbitrary and tantamount the abuse of the process of Court and the same has caused grave injustice to the petitioners and other members of 2nd party. As such the impugned proceedings under section 145 Cr.P.C. is quashed and the impugned orders are set aside.

The petition is allowed with costs of Rs. 500/.