(1954) 07 GAU CK 0013

Gauhati High Court

Case No: None

Holiram Gaonbura and Others	APPELLANT
Vs	
Remeswar Das	RESPONDENT

Date of Decision: July 14, 1954

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 145, 146

Citation: AIR 1955 Guw 1 : (1955) CriLJ 54

Hon'ble Judges: Sarjoo Prasad, C.J; Haliram Deka, J

Bench: Division Bench

Judgement

Sarjoo Prosad, C.J.

This is a reference made by Sri R, Hazarika, Additional Sessions Judge, Lower Assam Districts, recommending that an order, dated 1-6-53, attaching the disputed land u/s 146, Criminal P. C, should be set aside. The reference arises out of a proceeding u/s 145, Criminal P. C. The facts appear to be that there was a Civil Court decree in respect of the disputed land in favour of the second party, in which the first party was the judgment-debtor. In execution, of the decree, the second party claimed to have obtained delivery of possession of the disputed land and to have continued in such possession thereof. They have also been mutated in respect of the land and have been paying Government revenue.

The Magistrate, however, held that this delivery of possession which took place on 5-7-36, had not been satisfactorily proved, and that the first party who was the judgment-debtor, would be, therefore, presumed to have continued to occupy the disputed land; but in dealing with the evidence of the first party on the question of possession, he found that the evidence could not be accepted. In the result, the learned Magistrate held that neither party was in possession or had given clear and convincing evidence of actual possession of the disputed land. He, therefore, directed the land to be attached.

2. The learned Sessions Judge, in recommending that the order should be set aside, observes in the first place that the Magistrate should not have proceeded to Initiate the proceedings u/s 145, Criminal P. C, merely on an application from the first party and without any proper local investigation either by the Police or by some person authorised in this behalf.

Secondly, the learned Sessions Judge observes that it was not competent for the Magistrate to ignore the Civil Court decree when the dispute between the parties and their predecessors-in-interest had once been settled and the second party had, in execution of that decree, obtained delivery of possession. It was the bounden duty of the Magistrate, acting u/s 145, Criminal P. O., to maintain that decree, and he could not assume jurisdiction to start proceedings u/s 145, Criminal P. C, so as to nullify the effect thereof, and the delivery of possession which followed on the basis of the decree.

3. It is important to recall what the Magistrate himself observed on this point. The Magistrate held that a consideration of the evidence of the parties, both oral and documentary, showed beyond reasonable doubt that there was prima facie title with the second party. The question of title was immaterial, except in so far as It affected the evidence of actual possession. The Magistrate, however, proceeded as follows:

There had been disputes occasioning a title suit and appeal between the 1st party and others on one side and the father of the 2nd party on the other. Finally all these disputes were set to rest by the appellate order of the District Judge of A. V. Districts in Title Appeal No. 33 of 1934. This order under reference declared the title of the 2nd party''s father (Puaram) and also ordered for khas possession to be recovered from the first party.

In pursuance of the said appellate Court''s order, the appellant Puaram (father of the 2nd party) also appears to have had been put into possession as per Ex. B, Ex. A and Ex. L, through Court''s Nazir on 5-7-36. Since then the 2nd party (persons) have been paying the revenue also for the disputed land. A heap of land-revenue payment receipts go to amply prove this.

I have made a few verbal changes in the passage under quotation to remove clerical errors. In view of this finding, one would have expected that the Magistrate would decide the question of possession in favour of the second party, specially in view of the fact that the Magistrate found the evidence of the first party on the point of possession unreliable. It is also significant that the first party did not make out any case that after the delivery of possession, he had by some means got into possession of the land.

The Magistrate, however, proceeded to examine the evidence of delivery of possession and in that connection he commented upon the evidence of the Nazir who went to deliver possession of the disputed land to the second party. It appears that in respect of the delivery of possession, there was a receipt given by one Balek,

a brother of Haliram the second party, who presumably obtained delivery of possession. The receipt itself has not been disbelieved by the Magistrate, nor the evidence of the Nazir. But the comment of the Magistrate on that evidence runs thus:

....but on what authority he was put to possession, there is no evidence, though, in fact, Puaram, second party''s father, should have had been put to possession.

What difference does it make in law if Balek obtained delivery of possession on behalf of Haliram or Puaram? If any agent of the 2nd party could do so on behalf of Puaram, why not Balek? This was hardly any ground to question the delivery of possession when actually delivery of possession was given on the authority of the Civil Court decree itself. No further authority was needed. The Magistrate further erred in assuming that in the circumstances, the first party should be presumed to have continued to occupy the disputed land and had no knowledge of the decree-holder having been put in possession of the disputed land.

A Civil Court delivery of possession as against the judgment-debtor should be held to be binding on the Judgment-debtor, if delivery of possession has been given, as it has been in this case, and there is no presumption to the contrary. In fact, the presumption if at all, is in favour of the decree-holder as against the judgment-debtor. The Magistrate, therefore, acted illegally in directing attachment of the disputed land and in assuming that the possession of the 2nd party had not been established in face of the Civil Court decree and delivery of possession.

The learned Sessions Judge is also justified in observing that ordinarily in such cases, the Magistrate should not hasten to initiate proceedings u/s 145, Criminal P. C, without first satisfying himself by a local enquiry or otherwise, that there is an apprehension of a breach, of the peace necessitating a proceeding under that section. In his judgment, the Magistrate, of course, observes that there was likelihood of a breach of the peace between the parties on account of dispute as to the land in question. We, however, think that in view of the fact that the Magistrate has ignored the Civil Court delivery of possession on illegal and inadequate grounds, the order of the Magistrate attaching the land has got to be set aside. The Reference is accordingly accepted.

Deka, J.

I agree.