

(2013) 12 CAL CK 0040

Calcutta High Court

Case No: CRR No. 1216 of 2009

Shyamchand Mondal

APPELLANT

Vs

Anup Kumar Haldar and Another

RESPONDENT

Date of Decision: Dec. 5, 2013

Hon'ble Judges: Joymalya Bagchi, J

Bench: Single Bench

Advocate: Baidurya Ghosal, for the Appellant;

Final Decision: Disposed Off

Judgement

Joymalya Bagchi, J.

Order dated 03.02.2009 passed by the learned Additional Sessions Judge, 1st Fast Track Court, Lalbagh in Criminal Motion No. 8 of 2008 affirming the order dated 23.10.2007 passed by the Executive Magistrate in case No. 1092 of 2003 u/s 133 of the Code of Criminal Procedure has been challenged. It appears that the proceeding u/s 133 of Cr.P.C. was initiated at the behest of the opposite party No. 1 in respect of the land schedule pertaining to Khatian No. 1, Plot No. 231/5 and also in respect of the Plot No. A-7 in the nature of "Rasta" described in "Kha" schedule property. During the pendency of the said proceeding, an amendment application was filed by the opposite party No. 1 which was allowed by the learned Executive Magistrate by the impugned order dated 29.01.2008. By the said amendment other adjoining plots of land were also included in the schedule of the said petition. Such amendment was challenged by the petitioner before the revisional court in Criminal Motion No. 08 of 2008. The revisional court by the impugned order dated 3.2.2009 has dismissed such application. Hence the instant petition.

2. Mr. Baidurya Ghosal, learned counsel appearing for the petitioner, submitted that there was no scope for amending the petition filed u/s 133 of Cr.P.C. He accordingly submitted that the scope of the inquiry u/s 133 Cr.P.C. could not be enlarged in such a fashion and that too to the prejudice of the petitioner.

3. I have considered the materials on record. I find that initially the proceeding was instituted in respect of a schedule of property part of which has been claimed to be a "rasta". Undoubtedly, the petitioner is entitled to dispute such claim before the learned Magistrate in the course of the proceeding. Other adjoining plots of land were sought to be included in the schedule of the proceeding by taking out the amendment petition which was allowed by the courts below. Mr. Ghosal strenuously argued that the proceeding u/s 133 Cr.P.C. cannot be said to be civil in nature inasmuch as in conclusion thereof a person is directed to execute a bond the breach whereof attracts penal consequences including imprisonment. No doubt, a proceeding u/s 133 Cr.P.C. has some coercive import. However, the nature of such proceeding is essentially preventive in nature and its object is ameliorative inasmuch as it seeks to remove public nuisance over public property. Bearing in mind the ultimate purpose of such proceeding, the same cannot be construed to be in the nature of criminal trial for conviction of an offender.

4. Accordingly, I am of the view that any prayer for amendment or alteration the pleadings in such proceeding ought not to be viewed in a hypertechnical manner and may be allowed in the interest of justice so as to subserve the ultimate cause of removal of public nuisance.

5. The issue may be viewed from another angle. It is nobody's case that the opposite party is precluded from filing a subsequent proceeding from the selfsame relief in respect of the property which he seeks to include in the scope of inquiry in the present proceeding. If that is so, to debar the amendment of pleadings would only result in multiplicity of proceedings which would be contrary to the interest of justice.

6. For the aforesaid reasons, I am of the view that the impugned order permitting amendment of the pleadings in the instant proceeding u/s 133 Cr.P.C. cannot be said to be illegal.

7. I dispose of the application directing the learned Magistrate to forthwith proceed with the matter in accordance with law and dispose of the same at an early date preferably within six months from the date of communication of this order.

8. Needless to mention, the petitioner would have at liberty to file supplementary objection to the amended petition and also lead evidence in accordance with law to dispute the claim of the opposite party No. 1.

9. The application is accordingly disposed of. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.