

(1973) 07 CAL CK 0015

Calcutta High Court

Case No: Criminal Rev. Case No. 6 of 1973

Satish Chandra Mandal

APPELLANT

Vs

Bhupati Bhusan Mandal and
Another

RESPONDENT

Date of Decision: July 5, 1973

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 144
- Penal Code, 1860 (IPC) - Section 403

Citation: 78 CWN 576

Hon'ble Judges: N.C. Talukdar, J

Bench: Single Bench

Advocate: Harendra Nath Halder, for the Appellant; Samar Kumar Ghose for the Opposite Party No. 1, for the Respondent

Judgement

N.C. Talukdar, J.

This Rule is at the instance of the second party petitioner in a proceeding u/s 144 of the Code of Criminal Procedure and is directed against an order dated the 19th December, 1972, passed by the learned Magistrate, Hasnabad Camp Court in Case No. M-22 of 1972-73 directing that the entire produce of the land be shared between the second party petitioner and the first party opposite party No. 1 on 50:50 basis. The facts leading on the Rule are short and simple. On an application filed by the first party opposite party No. 1 before the learned Magistrate, Camp Court, Hasnabad alleging inter alia, that he was a bargadar in respect of R.S. plot No. 2129 of Khatian No. 444 of mouza Sulkani measuring about 3 bighas and claimed his share of the produce of the suit land Case No. M-22 of 1972-73 was started u/s 144 of the Code of Criminal Procedure. No proceedings were drawn up specifically but the learned Magistrate sent the petition to the C.I. (L.R.) for enquiry and report by the 8th December, 1972, by an order passed on the 5th December, 1972. The matter was placed before the learned Camp Magistrate, Hasnabad Camp Court on the 9th

December, 1972, and there being no report a tagid was issued fixing 12th December, 1972, as the next date. The report, however, came in the meanwhile and going through it, the date of hearing was fixed on 19th December, 1972. The report of the C.I. (L.R.) dated 12th December, 1972, inter alia, is that from the local enquiry it transpired that though Bhupati Bhusan Mondal was a cultivator in respect of plot No. 2247, he was not able to cultivate the land in the current year as the owner forcibly ousted him from the land when he was ploughing the said land. The cultivation as mentioned in the report was completed by the second party after ousting the first party from the land. On the 19th December, 1972, the learned Magistrate heard both the parties and ultimately held that he was satisfied that the first party is the bargadar in respect of plot No. 2247 and that he was restrained from cultivating the land forcibly in the current year and in view thereof, he ultimately ordered that the entire produce of the land in dispute be shared by the owner, Satish Ch. Mondal and the bargadar, Bhupati Bhusan Mondal on 50:50 basis. He further directed the O.C. Hasnabad to give effect to the order in presence of the officers by 24th December, 1972, and report compliance. Both the parties were informed accordingly. This order has been impugned and forms the subject matter of the present Rule.

2. Mr. Harendra Nath Halder, Advocate, appearing in support of the Rule submitted that both in law and on merits the order is wholly unsustainable and in fact is not only de hors the provisions of section 144 of the Code of Criminal Procedure but also in direct conflict with the relevant provision of the West Bengal Land Reforms Act, 1955. Mr. Halder contended in this context that the failure on the part of the learned Magistrate, Hasnabad Camp court, to take the same into consideration has not only resulted in a failure of justice but also in a non-formance to the procedure established by law. In this behalf he also relied on some cases. Mr. Samar Kumar Ghosh, Advocate, appearing on behalf of the opposite party No. 1 submitted in his fairness that the procedure adopted is not in accordance with that established by law and the necessary direction should be given so that the first party opposite party No. 1 Bhupati Bhusan Mondal may seek his remedy in the proper court.

3. Having heard the learned Advocate appearing on behalf of the respective parties and on going through the materials on the record, I find that there is a considerable force behind the submissions of Mr. Halder. The procedure adopted by the learned Magistrate, Hasnabad Camp Court is rather intriguing from the very beginning. The application is purported to be one u/s 144 of the Code of Criminal Procedure but no proceedings formally were drawn up. The learned Magistrate sent the application filed in this behalf by the first party to the C.I. (L.R.) for enquiry and report and on the submission of the report, after hearing the parties he passed the order impugned directing a distribution of the entire produce of the suit land between the owner and the bargadar on 50:50 basis. This he cannot do within the ambit of section 144 of the Code of Criminal Procedure and the imprimatur of judicial decisions is against it. The relevant Act is the West Bengal Land Reforms Act, 1955,

which has provided for the mode and the procedure to be adopted in this behalf in such cases. Without multiplying the cases, a reference may be made to two cases in this context. In the case of (3) Sasadhar Majumdar complainant petitioner v. Aminaddi Seikh, accused opposite party, reported in 61 C.W.N. 522 Mr. Justice Debabrata Mookerjee held that where there had been an award made by a Bhag Chas Board under which the opposite party was directed to do certain things, failure to comply with the order would make the opposite party liable to punishment u/s 14 of the West Bengal Bargadars Act. In such a case a proceeding u/s 403 of the Indian Penal Code would not be appropriate. The facts may not be exactly the same but the principle underlying is substantially the same. The failure on the part of the learned Magistrate, Hasnabad Camp Court to take the same into consideration has resulted in a non-conformance to the procedure established by law, vitiating ultimately the order passed. A reference again may be made to the case of (1) [Adhir Chandra Bera Vs. Vidyadhar Ari and Others,](#) . Mr. Justice Sen delivering the judgment of the court observed that disputes between persons who claim to be jotedars and persons who claim to be bargadars, really have to be filed before the appropriate Bhagchas Officer who has the jurisdiction under the Land Reforms Act to decide such questions. I respectfully agree with the said observations and applying the said yardstick to the facts of the present case, I hold that the learned Magistrate, Hasnabad Camp court has overlooked the clear position that arose under the circumstances on the record and he has further erred in directing a share of the crop on 50:60 basis which he cannot do u/s 144 of the Code of Criminal Procedure. The entire procedure adopted is wrong and it is just and fair that the resultant order based on the same should be set aside. Apart from the decisions referred to above and the principles laid down therein, the position in law is not quite clear as was observed by Lord Roche in the well known case of (1) Nazir Ahmed v. The King Emperor, reported in 63 I.A. 372 at page 381-382 that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other methods of performances are necessarily forbidden". I respectfully agree with the observations of the judicial Committee and I hold that the power given under the statute is to proceed under the West Bengal Land Reforms Act, 1955, and instead of doing that the learned Magistrate, Hasnabad Camp Court, proceeded in a way which is not in conformance to the procedure established by law, and very much de hors the provision of section 144 of the Code of Criminal Procedure. The order passed is ultimately untenable on merits. Justice demands that the order should be set aside and the first party should be directed to seek his relief in the proper forum. In the result, I make the Rule absolute and set aside the impugned order dated the 19th December, 1972. The first party-opposite party No. 1, if he is so advised, may seek his relief in the proper court.

The records shall go down as early as possible.