

IN THE COURT OF THE SESSIONS JUDGE :::::::::: DHUBRI

C.R. Case No. 34 (3)/ 2009

Petitioners : 1. Ahmed Ali
2. Kofiul Uddin

- Vs -

Opp. Party : Mosstt. Hazera Khatun Bewa

Present : Sri A. Bhattacharyya, AJS
Sessions Judge, Dhubri

Sri S. Ali, Advocate for the petitioners.
Advocate for the O.P. absent.

Date of Hearing : 10-01-2013

Date of Judgment : 10-01-2013

J U D G M E N T

The propriety, legality, correctness and regularity have been questioned in this revision preferred U/s.397 Cr.P.C. in respect of an order 03-08-2009 passed by the learned Executive Magistrate in connection with the case No.33/2009 U/s.145 Cr.P.C.

2. Being aggrieved and dissatisfied with the aforesaid impugned order, Ahmed Ali and Kofiul Uddin, assailed the impugned order on a numbers of grounds, which are narrated in the memo of Revision.

3. During hearing learned counsel of the revisionist is heard only as the O.P. found to be absent without step.

4. The story behind the filing of this revision may be narrated in the following manner that the O.P. of this revision Hazera Khatun Bewa brought an application before the S.D.M, Hatsingimari to draw up a proceeding U/s.107/144 of Cr.P.C. with a prayer to convert the same U/s.145 and 146

Cr.P.C. On getting the aforesaid petition, the learned S.D.M. forwarded the same to Executive Magistrate Shri J.K. Das for disposal. It is stated that the learned Executive Magistrate without drawing up any proceeding U/s.107/144 Cr.P.C. and not taking any police report or evidence had draw up a proceeding u/s.145 Cr. P.C. and attached the D/L vide the same order U/s.146 Cr.P.C. Thus the occasion of the revisionist to prefer the instant revision.

5. For the sake of convenience, the impugned order dated 03-08-2009 is reproduced herein below:

03-08-2009 : C.R. received on transfer, seen and perused the prayer petition and affidavit submitted by the first party. I am satisfied that there is possibility of breach of peace between the parties regarding a plot of land which is referred as D/L. As the matter of disputes between the parties regarding immovable property, so I draw up a proceeding u/s.145 Cr.P.C.

Further considering the case one of emergency and to avoid any untoward incident in the locality and to maintain peace & tranquility, I do hereby attached the D/L U/s.146 (I) Cr.P.C. on emergency ground.

Issue notice to both the parties to submit their W/S on next fix date in respect of their claims. O/C, Mankachar P.S.is hereby directed to execute the attachment order before the next fix date with the help of L/R staff as per the schedule given below and report compliance.

Schedule : In revenue village Chengurchar, under Circle Mankachar land measuring 01B-4K-9L, covered by Khotian No. 46, Dag No.112 bounded by N- Jhirul Hoque & legal heirs of Monglu Sk, S- Jomi Uddin, E- Abu Bakkar, i.e. legal heirs of Abdur Rashid and W- Meser Uddin and Nlau Sk.

Next date fix on 27/8/2009.

*Sd/- Sri J.K. Das, ACS
Executive Magistrate,
South Salmara, Mankachar Sub Dvn.
Hatsingimari*

6. I have carefully examined the impugned order in the light of the relevant provision of the law of the land. The

impugned order appears to be passed U/s.145 Cr.P.C. and U/s.146 of the Cr.P.C. It needs to be mentioned here that learned Executive Magistrates are empowered to draw up proceeding U/s.145 Cr.P.c. in respect of dispute relating to immovable property and considering the urgency and emergency they are also empowered to attach the land U/s.146 Cr.P.C. But doing so, the Magistrate are required to record satisfaction that aforesaid dispute is not a private dispute. It is further incumbent on the Magistrate to see that the aforesaid dispute relating to immovable property must have the potentiality to disturb the even tempo of the society in general.

7. It further needs to be mentioned here that the aforesaid two ingredients are the prerequisites to draw up proceeding U/s.145 Cr.P.C. But on examination of the impugned order in the light of the aforesaid ingredients so also the relevant provision of the Cr.P.C, it is found that the impugned order is lacking to show that the aforesaid ingredients of Sec. 145 Cr.P.C.

8. Therefore, in my considered opinion, learned trying Magistrate acted beyond his jurisdiction. Therefore, impugned order is illegal and accordingly, the same is set aside. Thus the revision is allowed and disposed of. Send back the L.C.R. along with the copy of judgment to learned trying Magistrate.

Given under my hand and seal of the Court on this 10th day of January, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri