

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

**Criminal Revision 24 (4)/ 2012**

Revisionists : Alauddin Ali & 6 (six) others

- Vs -

O.Ps : 1. Sri Raj Kumar Saha  
2. State of Assam  
Represented by the P.P, Dhubri

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

Sri Aminul Rahman Ahmed, Advocate for the Revisionists.

Sri S.K. Dey, Advocate for O.P. No.1

Sri M. Zaman learned P.P. Respondent for the State of Assam

Date of Hearing : 18 -11-2013

Date of Judgment : 25-11-2013

**J U D G M E N T**

The propriety, regularity, legality and correctness have been questioned in this revision preferred under Section 397 and Section 399 Cr.P.C. in respect of final order dated 17<sup>th</sup> December, 2012 passed by learned S.D.M, Dhubri in Misc. Case No.81/2007 under Section 145 Cr.P.C.

2. Being aggrieved and dissatisfied with the aforesaid final order one Alauddin Ali and 6 (six) others assailed the impugned order under various grounds, which are narrated in the memo of Revision.

3. During hearing L.C.R. is called for also learned counsel of the parties are heard.

4. Learned counsel of the Revisionist during hearing assailed the impugned order only on the following grounds:

i) That the dispute though relating to immovable properties is infact a private dispute between the parties and as such no proceeding under Section 145 Cr.P.C. can be initiated.

ii) That the dispute has got no potentiality to disturb the even tempo of the society in general, therefore, no proceeding can be continued between the parties under Section 145 Cr.P.C. Therefore, according to the learned counsel of the Revisionist, initiation of the proceeding under Section 145 Cr.P.C. is without jurisdiction of the learned trial Court below, thus, the same is illegal.

iii) The police report sought by learned trial Court below clearly shows that the land under dispute was possessed by the Revisionist since 8/9 years back. But during initiation of the proceeding under Section 145 Cr.P.C, the aforesaid aspect was ignored by the learned trial Court below and as such according to the learned counsel of the revisionist, impugned order is illegal.

iv) That in the final order possession of the D/L was declared in favour of the petitioner Raj Kumar Saha and the entitlement as to whether the petitioner was entitled to get vacant possession or not had been not mentioned in the final order. But subsequently on the same date in the order-sheet, it was mentioned that the petitioner Raj Kumar Saha is entitled to get vacant possession of the D/L, which is not in accordance with the provision of Sub-Section 4 of Section 145 Cr.P.C. Therefore, the impugned order is illegal.

5. On the other hand, learned counsel of the O.Ps of this Revision states that the order has been rightly passed on the evidences adduced by both the parties so also the documents exhibited by both the parties and as such this court has no scope to interfere with the final order passed by learned trial Court below. Thus, according to the learned counsel of the O.P., the impugned order is required to be affirmed.

6. I have carefully considered the submissions rendered by the learned counsel of the parties in the light of the L.C.R. and the proposition of the law of the land. On a minute perusal, it appears that on 10-07-2007 the present O.P. No.1 of this Revision preferred an application before the learned trial Court below against the revisionist stating that the land mentioned in the petition measuring about 17 bighas belonged to Manindra Mohan Saha whose name was recorded in record of rights and who possessed the land since last 50 years and after his death his sons (Raj Kr. Saha and others) have been possessing the land by cultivation. The O.P. alleged in the said petition that the O.Ps threatened him with dispossession on 09-07-2007 and also disturbed his peaceful possession.

7. The aforesaid petition dated 10-07-2007 was sent to i/c, Agomoni O.P. for report and on receipt of the report a proceeding was drawn up vide Misc. Case No.81/2007 under Section 107 Cr.P.C. and the same was converted to Section 144 Cr.P.C, thereafter to 145 Cr.P.C. and on the same petition attachment of the D/L was passed on 28-09-2007.

8. Thereafter, both the parties filed their written statement. Witnesses were also examined by both the parties. Documentary evidences were also adduced by both the parties. Finally written arguments were also rendered and on 17-12-2012, final order was passed whereby, possession of the disputed land was declared in favour of the petitioner. Further, it was narrated in the order sheet that the petitioner was entitled to get the vacant possession of the D/L. Thus, the occasion of the revisionist to prefer the instant revision.

9. On a minute perusal of the proposition of the law of the land in the light of the impugned order, it appears that under section 145 Cr.P.C, Executive Magistrates are empowered to initiate the proceeding in respect of the dispute concerning land or water. But in order to do so the Executive Magistrate must be satisfied that the dispute is not a private one. Further, the dispute must have the potentiality to disturb the even tempo of the society in general. This apart, under Sub-Section 4 of Section 145 Cr.P.C., the concerned Magistrate has additional power to restore the possession of the disputed land to the party also. But to do so, the Magistrate has to satisfy the following:

*Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)*

10. Now, I propose to see as to whether the final order has fulfilled the requirements of law of the land as narrated herein before.

11. The final order passed by the learned trial Court below shows that the same has rejected the police report which mentioned that the disputed land had been under the possession of the Revisionist since last 9/10 years. Further, the learned trying Magistrate recorded his opinion that the O.P. cultivated the disputed land till dispossession and persons of the revisionist came on the disputed land after selling the residences to one Genda Sk. and

dispossessed the O.P. from disputed land illegally. But the final order was silent as to the date of dispossession i.e. as to when the revisionist came to the D/L. This apart, the final order is silent as to the entitlement of the possession of the disputed land but in the order sheet it was mentioned that the petitioner i.e. the O.P. of the revisionist was entitled to vacant possession of the disputed land. In this regard, I feel that the observation recorded by the Hon'ble Apex Court of the Country in 1997 Cr. L.L. 2756 will be pertinent and the same is reproduced herein below:

*“It will be seen from the facts stated above that the order under Section 145 (1) was passed by the learned Magistrate on 16-03-1993. The question is whether the Magistrate could have passed any order in favour of the petitioner under sub-section (4) of Section 145. Going by the main sub-clause (4) of Section 145 it is clear that the Magistrate could initially decide who was in possession as on the date when the order under Section 145 (1) was passed on 16-03-1993. In cases where the proviso to the said sub-clause (4) applied, that is, if it appeared to the Magistrate that any party had been forcibly and wrongfully dispossessed, within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), the Magistrate might treat the party so dispossessed as if the said party had been in possession on the date of his order under sub-section (1). In other words, if the conditions mentioned in the proviso to sub-section (4) were satisfied, the Magistrate could deem a person to be in possession as on the date of the order under Section 145 (1) notwithstanding the fact that he was not in fact in possession on that date, but lost possession earlier, within two months next before the order. In this case unfortunately there is no material to show that any report of a police officer or other information was received by the Magistrate within the period contemplated by the proviso. On the other hand, petitioner's admissions show that she lost possession much before the period mentioned in the said proviso.”*

12. Now, considering the facts and circumstances of the case in hand, it appears that the final order has not mentioned as to whether the dispute between the parties was a private or public. Further, the final order is silent as to whether the dispute between the parties has the potentiality to disturb the even tempo of the society in general. This apart, the order of restoration of possession was not passed in compliance with the provision of Sub-Section 4 of Section 145 Cr.P.C.

13. For the aforesaid reasons, it is found that the final order has not fulfilled the conditions of Section 145 Cr.P.C and as such in my considered opinion the same is not legally sustainable. Therefore, the impugned order dated 17-12-2012 is hereby set aside. Accordingly the revision is allowed & disposed of on contest and without cost. The judgment is delivered in the open court. Send down the L.C.R. along with the copy of the judgment.

Given under my hand and seal of the Court on this 25<sup>th</sup> day of November, 2013.

Dictated & Corrected by me

Sessions Judge, Dhubri

Sessions Judge, Dhubri