

(2018) 03 GAU CK 0072
In the Gauhati High Court
Case No : Criminal Petition No. 474 of 2013

Amal Paul Choudhury

APPELLANT

Vs

Dwijamoni Singh

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145, 482

Citation : (2018) 03 GAU CK 0072

Hon'ble Judges : HITESH KUMAR SARMA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. This is an application, filed under Section 482 CrPC, seeking quashment of the judgment and order dated 03.06.2013, passed by the learned

Additional Sessions Judge (FTC), Cachar, Silchar, in Criminal Revision No. 23/2012.

2. I have heard, Mr. P. Bora, learned counsel appearing for the petitioner and Mr. NN. Upadhaya, learned counsel appearing for the respondent. I

have also perused the impugned judgment and order including records of the learned trial Court.

3. The aforesaid revision petition, before the learned Additional Sessions Judge (FTC), was filed challenging the order dated 04.02.2012, passed in

case No. 230(M)/2004, under Section 145 CrPC. In the case No. 230(M)/2004, the learned Additional District Magistrate passed an order dated

24.02.2009, declaring possession of the disputed land in favour of the first party/present respondent. Thereafter, the second party/present petitioner,

preferred the aforesaid revision petition before the learned Additional Sessions Judge (FTC), Silchar and the order dated 24.02.2009, referred to

above, was set aside on revision with a direction to dispose of the case afresh after giving opportunity of hearing to both the parties. Thereafter, as

second party did not appear and had not taken steps, the learned trial Court of Additional District Magistrate, passed an ex parte order declaring again

the possession of the first party/present respondent over the disputed land vide order dated 04.02.2012.

4. Whatever it may be, there is a civil suit in respect of the disputed land involved in the aforesaid proceedings, being Title Suit No. 167/2017, filed by

the present respondent, as plaintiff. In that suit, the right, title and interest and possession has been declared in favour of the present petitioner. Against

the aforesaid judgment in the Title Suit No. 167/2017, an appeal was preferred by the present respondent; vide Title Appeal No. 42 of 2010, before the

learned Civil Judge No. I, Cachar, Silchar. The appeal was dismissed by judgment and order, dated 28-05-2012. There is a Second Appeal, being RSA

No. 184 of 2012, pending before this Court, on being preferred by the present respondent challenging the judgment in the aforesaid Title Appeal No.

42 of 2010.

5. Now, it appears from the materials, placed before this Court, that a civil suit was instituted and disposed of declaring right, title and interest and

possession over the suit land, i.e., the disputed land, in favour of the present petitioner. In appeal, the judgment of the aforesaid Title Suit was affirmed

by the learned Civil Judge No. I, Cachar, Silchar, and presently a Second Appeal preferred by the present respondent against the judgment of the first

appellate Court is pending before this Court.

6. It is submitted that during the pendency of the original suit, referred to above, the order, dated 04-02-2012, was passed by the learned Additional

District Magistrate, in the proceeding under Section 145 of the Cr.P.C., specifically mentioned above. On perusal of the revisional Court's order

aforementioned, it does not appear that although the present petitioner raised the issue before the learned Additional Sessions Judge that during

pendency of civil suit in respect of the disputed land, the learned Additional District Magistrate could not have passed the order, dated 04.02.2012, this

issue was not decided. However it has come out, during the course of hearing, that the civil suit was decreed in favour of the present petitioner and

the same was affirmed by the learned appellate Court of Civil Judge (Senior

Division), Cachar, Silchar.

7. It is a settled position of law that while a suit is pending before the Civil Court in respect of land, which is also involved in a proceeding under

Section 145 of the Cr.P.C. and, particularly, when a decree is passed in the Title Suit, the order, dated 04-02-2012 could not have been passed by the

learned Additional District Magistrate.

8. He has also submitted that earlier, a revision petition was filed by the present petitioner before this Court and that was disposed of; therefore, the

present petition does not lie. As argued, this is a second revision petition. But it appears that this is a petition under Section 482 of the Cr.P.C. seeking

exercise of inherent power of this Court to prevent the abuse of the process of the Court.

9. In view of the settled position of law, to prevent the abuse of the process of Court, this Court is of the firm view that while the civil Court of

competent jurisdiction has passed the decree in favour of the present petitioner in respect of the same disputed land, no order could have been passed

by the learned Additional District Magistrate, in a proceeding, under Section 145 of the Cr.P.C., as has been done by him, vide order, dated 04-02-

2012.

10. Therefore, in the considered view of this Court the proceeding before the learned Additional District Magistrate, Silchar, in Case No. 230(M)/2004

needs to be quashed being abuse of the process of the Court, and accordingly, the same is quashed.

11. The criminal petition is disposed of accordingly.

12. Send back the LCR along with a copy of this judgment and order.