
(2012) 02 GAU CK 0072
In the Gauhati High Court
Case No : Criminal Petition No. 488 of 2011

Anjali Mazumdar @ Anjali Baruah

APPELLANT

Vs

Prasanna Kumar Mazumdar

RESPONDENT

Date of Decision : 23-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 146, 397, 397(3), 482

Citation : (2012) 3 GLT 325

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : S.P. Roy, Mr. D. Nandi, Mr. R.P.N. Singh and Mr. K. Rajbangshi, for the Appellant; R.D. Majumdar, for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—This is an unfortunate case of sibling discord reaching macabre heights. Shorn of details, the facts leading to the filing of the present application may be briefly noticed at the very outset. The petitioner is the own sister of the respondent. According to her, she is the owner and possessor of a plot of land measuring 1 katha 5 lechas covered by K.P. Patta No. 19 Dag No. 391/518(old) of village-Maligaon, mouza-Jalukbari in the revenue district of Kamrup (Assam), where she has her own dwelling house etc. The aforesaid land was settled with her by the Govt. of Assam in the Revenue (Settlement) Department vide the settlement order bearing No. RSS 736/90/13 dated 03.04.1991. She had constructed an RCC wall in place of the old and existing fencing separating her land from the land of the respondent. She alleged that at the instance of the respondent, the Guwahati Municipal Corporation (GMC) authorities issued a notice dated 31.10.98 asking her to stop construction of the said boundary wall.

2. The petitioner filed a civil suit being Title Suit No. 58/99 before the original Civil Court seeking a decree of permanent injunction against the defendants, which included the GMC authorities and the respondent (subsequently impleaded), from giving effect to the aforesaid notice dated 31.10.98 as well as

from demolishing the boundary wall of the petitioner. The petitioner also filed a petition for ad-interim injunction, which was registered as Misc. Case No. 28/1999. An ad-interim order of injunction was granted by the learned Civil Judge (Senior Division) No. 3, Guwahati on 20.03.1999. Subsequently, the learned Civil Judge vide his order dated 17.08.2001 vacated the said ad-interim order of injunction. Against that order, the petitioner preferred an appeal, which was registered as Misc. Appeal No. 18/2002. The learned Adhoc District Judge No. 2, Kamrup, Guwahati by his order dated 12.08.2002 allowed the said appeal by setting aside the order dated 17.08.2001 passed by the learned Civil Judge (Senior Division) No. 3, Guwahati.

3. According to the petitioner, Title Suit No. 58/99 is still pending and the effect of the aforesaid order dated 12.08.2002 is that the ad-interim order of injunction dated 20.03.1999 continues to hold the field.

4. In the meanwhile, the respondent as the first party filed an application before the learned Additional District Magistrate, Kamrup u/s 145/146 Cr.P.C. against the petitioner, who was arrayed as the second party. The respondent alleged that he was in possession of a plot of land measuring 4 kathas 12 lechas covered by Dag No. 391 situated at P.N.G. Barua Road, Maligaon Chariali, Guwahati alongwith the residential houses constructed thereon. The mother of the respondent was the occupier of the said land by virtue of a registered lease deed executed in her favour by one Shri Narayan Chandra Sharma in the year 1963. According to the respondent, his mother had left a registered will being deed No. 5/89 dated 31.01.1989 in respect of the aforesaid land and property, as per which he is the executor of the will. The mother expired on 16-01-96. As per the own admission of the respondent, he is yet to obtain probate from the competent court of law to divide and distribute the land and property covered by the will amongst the legatees. The respondent further admitted that the petitioner is one of the legatees of the will in as much as she is also one of the legal heirs of the deceased mother. He however claimed to be the caretaker of the entire property. The respondent stated that the petitioner had been trying to get settlement of the land in her favour against the wish of the deceased mother as expressed in the will. He further stated that he had submitted application before the GMC authorities not to grant any permission for construction etc. over the said property till the grant of the probate. However, he alleged that the petitioner in connivance with some home guard personnel entered into the rear portion of the residential house of the respondent, started forcible construction of a RCC wall on 25.10.1998 with the intention to forcibly occupy the land. This led to a tense situation. Though the matter was reported to the Jalukbari Police Station, no steps were however taken by the police to stop the construction of the wall. The petitioner continued to construct the wall and in this way, dispossessed the respondent from a plot of land measuring 1 katha 2 lechas as described in the schedule to the said petition. The respondent, therefore, requested the learned Magistrate to draw up a proceeding u/s 145 Cr.P.C., to attach the disputed land and after hearing the parties, to declare his possession over the land in question.

5. It appears that the learned Executive Magistrate called for a report from the Jalukbari Police Station. As per the police report dated 18.11.1998, both the parties are residing over the plot of land of their late mother Jogabala Mazumdar by raising permanent houses after dividing the said plot of land. On the backside of the dwelling houses of both the parties, a plot of land is lying vacant for which a dispute is going on between both the parties. As per the police report, patta has been issued in the name of the petitioner and she is in possession over the said plot of land with a brick wall demarcating her land, The police report, however, stated that there is a dispute going on over the said plot of land for a long time. Apprehending that it may lead to breach of peace, the police report suggested drawing up a proceeding u/s 145 Cr.P.C.

6. The said case was registered as Case No. 24m/1999. The learned Executive Magistrate, Guwahati by the order dated 25-03-1999, after observing that there was every likelihood of serious breach of peace between the parties regarding possession of the said land, drew up a proceeding u/s 145 Cr.P.C.

7. During the pendency of the aforesaid proceeding u/s 145 Cr.P.C., the respondent filled a civil suit in the Court of the learned Civil Judge (Senior Division) No. 1, Guwahati seeking a decree for cancellation of the settlement of the land granted in favour of the petitioner. The said suit was registered as Title Suit No. 213/1999. One of the prayers made in the said suit was for a decree for recovery of possession by ejecting the petitioner from the suit land, which is the land settled with the petitioner.

8. The petitioner, who was made the defendant No. 4 in the said suit, filed a petition for return of the plaint contending that the suit was not maintainable.

9. The learned Civil Judge (Senior Division) No. 1, Guwahati by the order dated 14.05.2002 held that the said suit was barred u/s 154(1)(a) of the Assam Land and Revenue Regulation and as such not maintainable. The plaint was therefore rejected.

10. It is stated that the said order dated 14.05.2002 has neither been challenged before any higher Court nor any fresh legal steps taken thereafter in this regard. Therefore, the said order of the Civil Court dated 14.05.2002 has attained finality.

11. The petitioner thereafter filed a petition dated 23/12.2004 in Case No. 24m/1999 requesting the learned Executive Magistrate to drop the proceeding in view of the aforesaid order of the Civil Court dated 14.05.2002. The respondent filed his objection to the said prayer seeking rejection of the said petition and to continue with the proceeding u/s 145 Cr.P.C.

12. As no decision was taken by the learned Executive Magistrate on the said petition filled by the petitioner, Criminal Revision No. 26/2007 was filed by the petitioner in the Court of the learned Additional Sessions Judge (FTC) No. 2, Kamrup at Guwahati. The learned revisional Court below by the judgment and order dated 31.03.2008 allowed the said revision by directing the learned

Executive Magistrate to dispose of the petition filed by the petitioner on 23.12.2004 in accordance with law.

13. The learned Executive Magistrate, Kamrup (M), Guwahati thereafter took up the said petition filed by the petitioner and by the order dated 16.10.2009 declined to accept the prayer of the petitioner and decided to continue with the proceeding. The relevant portion of the said order reads as under:-

However, in this instant proceeding u/s 145 Cr.P.C. the matter to be decided is with regard to breach of peace and actual possession in question.

Moreover, with regard to the point raised Advocate of the 2nd party, that when there is pendency of a Civil Suit, a proceeding u/s 145 Cr.P.C. is barred by law, its worth quoting that the Title Suit No. 213/99 had been already dismissed as is reflected from the point number 2 of the petition dated 23.12.2004, and hence there is no question of pendency.

Looking into all these, I hereby proceed to continue this instant proceeding and direct the 2nd party to adduce evidence on the next date.

14. The legality and validity of the said order dated 16.10.2009 was questioned by the petitioner in a revision filed in the Court of the learned Additional Sessions Judge (FTC) No. 1, Kamrup at Guwahati, which was registered as Criminal Revision No. 1/2010. The learned revisional Court below by the judgment and order dated 17.06.2011 dismissed the said revision petition and affirmed the order dated 16.10.2009 passed by the learned Executive Magistrate, Kamrup, Guwahati in Case No. 24m/1999.

15. By this application u/s 482 Cr.P.C., the petitioner has challenged the legality and validity of the aforesaid order dated 16.10.2009 passed in Case No. 24m/1999 and also for quashing of the entire proceeding in Case No. 24m/1999 pending before the learned Executive Magistrate, Kamrup (M) Guwahati. This Court by order dated 31.10.2011 while issuing notice of motion, had stayed the further proceeding of the aforesaid case.

16. Heard Mr. S.P. Roy, learned counsel for the petitioner. Also heard Ms. R.D. Mazumdar, learned counsel for the respondent.

17. Mr. Roy, learned counsel for the petitioner submits that the materials on record clearly show that the land in question belongs to the petitioner as she was lawfully settled with the same. The police report also indicates that the petitioner was in possession over the said land. He further submits that there is an injunction order of the competent Civil Court restraining the GMC authorities and the respondent from demolishing the boundary wall of the petitioner. Coupled with these, the rejection of the plaint by the learned Civil Court in Title Suit No. 213/99 instituted by the respondent seeking cancellation of the settlement of the land in favour of the petitioner and for recovery of possession, clearly indicates that there is no doubt or dispute at all regarding the possession of the land by the petitioner. Therefore, learned counsel submits that the continuation of

proceeding u/s 145 Cr.P.C. would not be justified and prays for quashing of the same.

18. Resisting the submissions made by the learned counsel for the petitioner, Ms. R.D. Mazumdar, learned counsel for the respondent on the other hand submits that the present petition though filed u/s 482 Cr.P.C., is basically a second revision petition filed by the petitioner. In view of the statutory bar on second revision u/s 397(3) Cr.P.C., learned counsel for the respondent submits that the present petition is not maintainable and should be dismissed on this ground alone. Even on merit, learned counsel submits that there is no such decree of the civil Court finally determining the title of any of the parties. Therefore, there is no bar for the learned Executive Magistrate to continue with the proceeding u/s 145 Cr.P.C.

19. The rival submissions made at the bar has received the due and anxious consideration of the Court.

20. Since the learned counsel for the respondent has raised the issue of maintainability of the present petition, it is considered appropriate to take up the said issue first for consideration.

21. As has been noticed above, the petitioner had filed a petition before the learned Executive Magistrate for dropping the proceeding u/s 145 Cr.P.C. in view of the order passed by the Civil Court. The said prayer was not accepted by the learned Magistrate, against which the petitioner had filed a revision petition which was also dismissed. Against that, the petitioner has filed the present petition u/s 482 Cr.P.C.

22. The Apex Court in the case of Jitender Kumar Jain Vs. State of Delhi and Others, held that though a second revision petition doesnot lie before the High court when one is dismissed by the Court of Session, still the Court of Session is a court subordinate to the High Court and as such its proceedings are open to scrutiny of the High Court in exercise of its inherent power u/s 482 Cr.P.C. Again, in the case of Shakuntala Devi and Others Vs. Chamru Mahto and Another, , the Apex Court held as under :-

24. It is well settled that the object of the introduction of sub-section (3) in Section 397 was to prevent a second revision so as to avoid frivolous litigation, but, at the same time, the doors to the High Court to a litigant who had lost before the Sessions Judge were not completely closed and in special cases the bar u/s 397(3) could be lifted. In other words, the power of the High Court to entertain a petition u/s 482, was not subject to the prohibition under sub-section (3) of Section 397 of the Code, and was capable of being invoked in appropriate cases.....

23. In the present case, the question is as to whether the proceeding u/s 145 Cr.P.C. should be allowed to continue any further in view of one order of the Civil Court which has attained finality and another interim order of the Civil Court

holding the field, and also because of the long pendency of the proceeding. Since this is an issue which goes to the root of the matter, I am of the view that the present is a fit case where the inherent power of this court u/s 482 Cr.P.C. is required to be invoked to examine the matter closely.

24. A proceeding u/s 145 Cr.P.C. is primarily concerned with the prevention of breach of peace by declaring the party found in possession to be entitled to remain in possession until declared otherwise by a competent civil Court. The duty of the Magistrate is not to go into questions of title but to meet the urgency of the situation by maintaining the party in possession. The enquiry is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. A proceeding u/s 145 Cr.P.C. is purely of a preventive and provisional nature, the purpose being to ward off commission of breach of peace or to preserve the peace. The executive machinery has to act with speed and haste to maintain peace in the area concerned.

25. While it is true that the mere filing or pendency of a civil suit between the parties does not oust the jurisdiction of the Executive Magistrate to proceed u/s 145 Cr.P.C., but at the same time, it has to be understood that in such a situation, the Magistrate has to be very careful and should not lightly proceed in the matter.

26. Again, though there is no time limit prescribed for disposal of a proceeding u/s 145 Cr.P.C., considering the very nature of such a proceeding, it should not be allowed to be dragged on for a long time.

27. Coming to the facts of the present case, it is seen that the petition u/s 145 Cr.P.C. was filed by the respondent on 12.11.1998. The police report dated 18.11.1998 clearly stated that the petitioner is the patta holder of the land in question, having been settled with the said land by the State Government and that she is in possession of the said land with a boundary wall standing thereon, demarcating her land. The learned Magistrate drew up the proceeding u/s 145 Cr.P.C. four months thereafter on 25.03.1999. Against the construction of the boundary wall, the GMC authorities had issued a stop construction notice dated 31.10.1998. The same is under challenge in Title Suit No. 58/1999 stated to be pending in the Court of the learned Civil Judge (Senior Division) No. 3, Guwahati with an order of injunction restraining the GMC authorities and the respondent from demolishing the boundary wall of the petitioner holding the field. Thereafter, the respondent filed Title Suit No. 213/1999 seeking cancellation of the settlement of the land in question in favour of the petitioner and also for recovery of possession by ejecting the petitioner therefrom. In paragraphs 9 and 26 of the plaint, the respondent had alleged that the petitioner forcibly occupied the land in question on 25.10.1998. In paragraph 13 thereof, he had admitted that the name of the petitioner was recorded in the Jamabandi and that the said land covered by dag No. 391/518 under K.P. Patta No. 19 of Maligaon village, Jalukbari mouza stood mutated in the name of the petitioner. Title Suit No.

213/1999 was dismissed by the learned Civil Judge (Senior Division) No. 1, Guwahati by order dated 14.05.2002 by holding the said suit to be not maintainable. The said order has neither been challenged before the higher Court nor any fresh/subsequent legal step been taken by the petitioner thereafter. As such, the said order dated 14.05.2002 has attained finality.

28. Thus, even if the contention of the respondent is to be accepted as it stands, the position which clearly emerges is that the petitioner is in possession of the land in question and the suit seeking restoration of possession of the said land to the respondent had been dismissed. As per the respondent's own version, the petitioner is in possession over the said land since 25.10.1998. As noticed above, the learned Magistrate drew up the proceeding u/s 145 Cr.P.C. only on 25.03.1999. Therefore, hypothetically speaking, even the benefit of the proviso to sub-section (4) of Section 145 Cr.P.C. would not be available to the respondent.

29. The attempt by the respondent for possession of the land in question through a civil proceeding has ended in failure, with no further step being taken by the respondent thereafter. On the other hand, there is an injunction order of the Civil Court in a civil suit instituted by the petitioner restraining the defendants from demolishing her boundary wall. These are relevant factors which ought to have been considered by the learned Executive Magistrate. Instead, in his order dated 16.10.2009, he very mechanically stated that since Title Suit No. 213/1999 had been dismissed, there is no question of pendency of any civil suit and, therefore, decided to continue with the proceeding. This in my view reflects clear non-application of mind by the learned Magistrate.

30. The proceeding impugned was drawn up on 25.03.1999 and now we are in the year 2012. Almost 13 years have gone by, with the end nowhere in sight. Section 145 Cr.P.C. provides for an interim measure where breach of peace is imminent. In my view, immanency or urgency of the situation cannot be stretched to a period of more than a decade. The continuation of the proceeding from 1999 to till date indicates that there is neither any apprehension of breach of peace nor any justification for continuing the proceeding before the learned Magistrate any further on the facts which were before him in March, 1999 when he drew up the proceeding. Consequently, I am of the opinion that it will be an abuse of the process of the Court if the proceeding is permitted to continue any further. Moreover, the impugned proceeding has led to a multiplicity of litigation between the parties which is neither in the interest of the parties themselves nor in the public interest. It has also led to, perhaps, a permanent rupture in the relationship between the members of the same family.

31. Considering the above, I am of the view that it would be in the interest of justice if the proceeding u/s 145 Cr.P.C. is terminated. Accordingly, the order dated 16.10.2009 and the proceeding in Case No. 24m/1999 pending before the learned Executive Magistrate, Kamrup (M), Guwahati are hereby quashed.

32. Criminal Petition No. 488/2011 stands allowed. No cost.