
(2022) 10 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Petition No. 199 Of 2022

G Akanito Assumi @ G Akanito Sumi

APPELLANT

Vs

Sikander Rongpi

RESPONDENT

Date of Decision : 20-10-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145, 397, 401, 482

Citation : (2022) 10 GAU CK 0006

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : A Tiwari

Final Decision : Allowed

Judgement

1. Heard Mr. F. Khan, learned counsel for the petitioner and also heard Mr. M. P. Sharma, learned counsel for the respondent.

2. This petition, under Sections 482, read with section 397/401 of the Code of Criminal Procedure, is directed against the order, dated 05.02.2022, passed by the learned Addl. District Magistrate, Bokajan, Karbi Anglong, in M.R. Case No. 01/2021, under section 145 of the Code of Criminal Procedure. It is to be mentioned here that vide impugned order, the learned court below had declared that the respondent is in actual possession of a plot of land measuring 21 Bigha, covered by Periodic Patta no. 56, Dag No. 78, situated at Nahorjan Block No.2 village.

3. The factual background, leading to filing of the present petition, is briefly stated as under:

"The petitioner is the owner of a plot of land measuring 50 Bighas, situated at Nahorjan village, covered by periodic patta No. 12, under dag No. 80/48, periodic patta No. 14, under dag No. 162, periodic patta No. 15, under dag No. 163 (115)/52, periodic patta No. 16, covered by dag No. 164 (115)/50, periodic patta No. 19, covered by dag No. 140 of Nahorjan Nonk, Mouza-Bokajan, No.2

Lat, Diphu Revenue Circle, Karbi Anglong. He entered into the peaceful possession of the same way back on 15.07.1997, having received the same by way of gift from donors on execution of gift deeds which were authenticated by Judicial Magistrate, 1st Class, Karbi Anglong, Diphu on 14.10.2004. Since then the petitioner have been paying land revenue and other taxes in the name of the donors in as much as the land is yet to be transferred in the name of the petitioner but he has already filed petition to that effect. Thereafter he had developed the land by erecting boundary pillars and also by digging drain around the same. Thereafter, on 15.01.2021, the respondent along with some antisocial persons entered into the aforesaid land and fell down some trees and also caused mischief of other properties standing on the said plot of land. Having got the information he went there and approached the petitioner to leave his place and then the respondent left that place, but, on 19.01.2021, against the respondent entered into the said land. The petitioner then approached the local police, by filing one FIR and on intervention of police, the respondent left the place. Thereafter, again on 16.02.2021 the respondent entered into his land and started digging land. Then the petitioner had filed a complaint petition under section 145 Cr.P.C. before the court of learned Addl. Deputy Commissioner, Bokajan, praying for restraining the respondent and his men, agent and servant from entering into the land of the petitioner. Upon the said complaint the learned Addl. Deputy Commissioner had registered a case, being M.R. Case No. 01/2021. Thereafter, the learned Addl. Deputy Commissioner, Bokajan had directed the Officer-in-Charge (O/C), Dillai P.S. to enquire the matter and to submit one report, vide order dated 19.02.2021. Thereafter, the O/C Dillai had conducted an enquiry and submitted one Non-FIR case No. 01/2021. But, the case could not proceed with due to Covid. Thereafter the respondent again entered into the land of the petitioner and started working with JCB/Excavator to change the nature and character of the land. Then the petitioner again filed one FIR against the respondent on 03.06.2021. The petitioner then filed one application before the Addl. D.C., Bokajan, on 17.06.2021 and the Addl. D.C then asked the officer-in-charge of Choto lengri Police Petrol Post, to take necessary action as per law, but no action has been taken upon the same. Thereafter, the Addl. D.C. had issued notice to him and the respondent to appear before him on 16.09.2021. Thereafter, on appearance of the parties the Addl. D.C had fixed the case on 27.10.2021, for filing objection by the parties. But, on that day he could not appear before the court on account of his illness and he filed adjournment prayer through his brother, and the same was granted, but the next date was not informed to him. Then when he sent his brother again to enquire about the next date then he was informed by the Bench Asstt. of the court that on account of Covid, cases were not taken up and the date will be communicated when the cases will be taken up. Thereafter, on 03.03.2022, when he went to the court he was informed by the Bench Asstt. of the Addl. D.C that the case has been disposed of vide ex-parte order dated 05.02.2022, observing that since the petitioner remained continuously absent for three consecutive dates without any step, the allegations leveled by the petitioner/1st party has no any strength and

the documents submitted by the 2nd party is found to be true and right and the 2nd party is in actual possession of the disputed land since long and thereafter declared the possession in the favour of the 2nd party.”

4. Being highly aggrieved, the petitioner has preferred this present petition, under section 482 read with section 397/401 of Cr.P.C. and contended to set aside the impugned judgments and orders on the following grounds:-

(i) That, the impugned order dated 05.02.2022, passed by the learned Addl. D.C, Bokajan suffers from material irregularity and he exceeded jurisdiction not vested upon him;

(ii) That, the learned court below has passed the impugned order without taking evidence and without affording opportunity of being heard to both the parties;

(iii) That, the learned court below had violated the principles of natural justice without giving an opportunity of hearing to the petitioner;

(iv) That, non-appearance of the petitioner before the learned court below was neither intentional nor deliberate, rather it was a bona-fide one;

(v) That, the learned court below without going through the merits of the claim of the parties to the legal right of possession, declared the possession in favour of the respondent;

(vii) That, the learned court below had passed the impugned ex-parte order after going through the documents of the respondent;

5. The respondent has submitted his affidavit-in-opposition denying the assertions made in the petition. It is stated that the Gift Deeds, based on which the petitioner has made claim over the disputed land, were unregistered Deeds and in case of transfer of property of value of which is more than Rs.100/, must be registered, and that the land of the respondent measuring 21 bighas covered by dag No. 78 of P.P. No. 56 of revenue village-Nahorjan Block 2, Mouza-Naharjan, and the same is completely different from the land of the petitioner, though the same are adjacent and the respondent has been developing and cultivating the same, and that initially the land was annual patta land and was standing in the name of his father and thereafter, it was converted to K.P. land vide approval No. KAAC/Rev/1272, conversion of land/19-2000/096(A), dated 17.11.2000 and that a holding Certificate was issued on 13.05.2020, in the name of his father Sar Rongpi, and thereafter, Jamabandi and Chitha was issued in his name, and his father died on 02.12.2018, and thereafter, the respondent has inherited the said plot of land by right of inheritance. There is no prima-facie case in favour of the petitioner and the learned Addl. D.C. has rightly arrived at the finding and the same requires no interference of this court.

6. The petitioner had submitted an additional affidavit also enclosing kecha patta of the disputed lands as Annexure-'A' to 'O' and some of other documents.

7. Mr. F. Khan, the learned counsel for the petitioner submits that the learned

court below had decided only one plot of land and passed order in a pick and choose manner, though there was six other plots of land. Mr. Khan further submits that the impugned order is not a speaking order and no discussion of witnesses have been made therein and no opportunity of being heard is afforded to the petitioner before disposing of the petition and as such the matter be remanded back to the same court by setting aside the impugned order, for a fresh decision. Mr. Khan also referred following two case laws to buttress his submission:-

(i) C.V. Raja Rao and Another vs. Mirza Basheer Baig and Others reported in (1996) 8 SCC 740

(ii) Shamim Alam vs. Sajid Hussain and Another reported in (2005) 10 SCC 551,

8. On the other hand, Mr. M.P. Sharma, learned counsel for the respondent submits that the impugned order suffers from no infirmity or illegalities requiring any inference of this court. Mr. Sharma further submits that there is no dispute in respect of the land of the respondent and he is in possession of the land which he has inherited from his late father and that there is no merit in this petition, and therefore, it is contended to dismiss the same.

9. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also I have carefully gone through the impugned dated 05.02.2022, passed by the learned Addl. D.C. Bokajan, Karbi Anglong, and the case laws referred by the learned counsel for the petitioner, and I find sufficient force in the submission of Mr. Khan, the learned counsel for the petitioner and the ratio laid down in the case laws referred by him also strengthen his submission.

10. From a bare perusal of the impugned order dated 05.02.2022, passed by the learned court below in M.R. Case No. 01/2021 u/s 107/145 Cr.P.C. reveals that the learned court below had declared possession of a plot of land measuring 21 bighas, covered by Myadi Patta No. 56, Nag No. 78, situated at Village:- Nahorjan Block No.2, Mouza Borjan, under Diphu Revenue Circle, bounded by East :- Land of Nenti Jamir, West :- Land of Kalai Engti, North :- Land of Roson Terang and Jemson Engleng, South:-Land of Tezbahadur Chetry.

11. Whereas, in the revision petition filed before this court and also in the petition under section 145 Cr.P.C., filed by the petitioner before the learned court below reveals that the dispute between the petitioner and the respondent was in relation to a plot of land measuring 50 bighas, situated at Nahorjan village, covered by Periodic Patta No. 12, under Dag No. 80/48, Periodic Patta No. 14, under Dag No. 162, Periodic Patta No. 15, under Dag No. 163 (115)/52, Periodic Patta No. 16, covered by Dag No. 164 (115)/50, Periodic Patta No. 19, covered by Dag No. 140 of Nahorjan Nonk, Mouza - Bokajan, No.2 Lat, Diphu Revenue Circle, Karbi Anglong. The petitioner never stated that there was any dispute between him in relation to the plot of land measuring 21 bighas, which is described in the impugned order dated 05.02.2022, by the learned court below.

Mr. M.P. Sharma, the learned counsel for the respondent, has rightly pointed this out in his argument. And the same is duly pleaded in the affidavit in opposition also. Thus, from the aforesaid discussion, it becomes loud and clear that the impugned order suffers manifest illegality due to complete non-application of mind, as the case was filed in respect of different plot of land covering different dag and patta number but the impugned order was passed in respect of a different plot of land with different dag and patta number.

12. Further, it appears that the impugned order was passed ex-parte, when the petitioner remained absent. The petitioner in paragraph No. 16, 17 and 18 of the petition stated that on 27.10. 2021, he could not remained present in the court on account of his illness. On a prayer being made through his brother adjournment was granted but no date was fixed. Then when he sent his brother again to enquire about the next date then he was informed by the Bench Asstt. of the court that on account of Covid, cases were not taken up and the date will be communicated when the cases will be taken up. Thereafter, on 03.03.2022, when he went to the court and enquired about the date then he was informed that the case proceeded ex-parte against him and the same has already been disposed of on 05.02.2022.

13. From the affidavit in opposition it becomes apparent that that the respondent has simply denied the above assertion of the petitioner. But, his denial simpliciter is found to be not sound convincing. It is not stated on which dates the petitioner had remained absent and neglected the process of the court either in the affidavit in opposition and also in the impugned order. It is categorically stated in the petition that he could not appear on due date on account of his illness and his brother had filed a petition for adjournment and though the same was granted the next date was not informed, and subsequently, when he had sent his brother again, he was informed that the case were not taken up on account of Covid and date will be communicated when the same will be taken up. On 03.03.2022, when the petitioner had enquired about the date of the case, he was informed that the same has already been disposed of. Having not denied these facts specifically, the goes a long way to show that the impugned order was passed behind the back of the petitioner in contravention of the principle of natural justice as well as in violation of the right to fair trial of the petitioner.

14. It is to be noted here that fair trial is the main object of Code of Criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interest of the accused, the victim and of the society and therefore fair trial includes the grant of fair and proper opportunities to person concerned, and the same must be ensured as this is a Constitutional as well as human right. Thus under no circumstances can a person's right to fair trial be jeopardized. Reference in this context can be made to a decision of Hon'ble Supreme Court in Talab Haji Hussain vs. Madhukar Purshottam Mondkar & Anr, reported in AIR 1958 SC 376. As in the present case the petitioner was not heard before passing of the

impugned order, his right to fair trial as well as the principle of natural justice stands violated.

15. The above being the factual as well as legal position, this court is of the view that the impugned order cannot withstand the legal scrutiny and therefore, this court is of the considered opinion that allowing the same to stand will perpetuate the illegality and therefore, the inherent jurisdiction of this court under section 482 of the Code of Criminal procedure can be invoked to set it right by quashing the impugned order, dated 05.02.2022, passed by the learned Addl. D.C., Bokajan, Karbi Anglong, in M. R. Case No. 01/2021.

16. In the result, I find sufficient merit in this Criminal Petition, and accordingly, the same stands allowed. The impugned order, dated 05.02.2022, passed by the learned Addl. D.C., Bokajan, Karbi Anglong, in M. R. Case No. 01/2021, stands set aside and quashed. Stay, if any granted earlier, stands vacated. The matter is remanded to the learned court below with a direction to afford opportunity of hearing to both the parties and thereafter to pass a fresh order. It is further provided that if there is any confusion regarding the identity of the disputed land, the learned court below shall be at liberty to take the assistance of Surveyor. The parties are directed to appear before the learned court below within 15 days from the date of this judgment and order. The parties have to bear their own costs.