

(1972) 12 GAU CK 0002
In the Gauhati High Court

Hamendra Nath Biswas and Others

APPELLANT

Vs

Mrinal Kanti Choudhury

RESPONDENT

Date of Decision : 05-12-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 143, 144, 145, 439

Citation : (1973) CriLJ 975

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Judgement

Baharul Islam, J.—This application u/s 439 of the Code of Criminal Procedure by the second party in a proceeding u/s 143 of the Code of Criminal Procedure is directed against the order dated 27-8-1970 Passed by the Sub-Divisional Magistrate (Judicial). Kokra.ihar. He passed the order declaring possession of "the first party, Mrinal Kanti Choudhury. Manaeer, Mornoi Tea Estate Mornoi. P.S. Gossaieaon. District Goalpara." The facts necessary for the purpose of disposal of this application may briefly be stated as follows:

2. The first party filed an application under Sections 144 and 107 of the Code of Criminal Procedure against the second party on 19-5-1969 before the District Magistrate (E), Dhubri. The learned Magistrate sent the application to the officer-in-charge. Gossaigaon Police Station, to take necessary action. Ultimately, however on police report, the application was treated as one u/s 145 of the Code of Criminal Procedure and Proceedings were drawn by the Magistrate on 6th August, 1969. Both the parties filed written statements and documents. The learned Magistrate declared the first party to be in Possession, of the property. The second party then moved the Sessions Judge for a reference but without success. Hence this application.

3. Counsel for both the parties were heard and they concluded their arguments on 28-11-1972 and learned; counsel for the Petitioners also partly made his submissions in reply when the Court rose for the day. The case was called for further hearing of the reply of learned Counsel for the petitioners on> the next

day, when learned Counsel for the opposite party sought to submit that the application u/s 439 was barred by limitation. He submitted that the impugned order of the Magistrate was passed on 27th August, 1970 and the revision application was filed on 3rd February, 1971. The limitation prescribed under Article 131 of the Limitation Act is 90 days and the time for obtaining the copy was only two days. He submitted that as the petitioners were not entitled to get the benefit of the period taken by the Sessions Judge in disposing" of the motion the application was clearly barred by limitation. Though the point is of importance. I leave it to be decided in an appropriate case; it cannot be entertained at this stage of hearing of this application without causing serious prejudice to the petitioners.

4. Let me now proceed to dispose-of the application on merit. The first submission of Shri Lahiri is that no-order can be passed in favour of the-Manager, who is the first party in this case and for this he takes reliance on an unreported Special Bench decision of this Court made in Criminal Revn No. 7" of 1968 (Manager, Diniov Tea Estate v. Joychandra Goswami) disposed of on 19-1-1972. This decision has not decided the-question raised by learned Counsel. In that case the impugned order which was made against the second party. who was the Manager of the Tea Estate, was Quashed on the ground that the findings of the Magistrate based on the findings of the Munsiff were "None of the Parties possessed the land by ploughing, hoeing and cutting firewood by themselves. They claim possession through Adhiar, thika or through ploughmen." The Special Bench therefore quashed the proceedings on the ground that none of the parties, who were actually in possession, were made parties to the proceedings. The Special Bench has not held that in no case an order can be passed either in favour or against the Manager of a Tea Estate as contended by learned Counsel.

Whether an order can be passed in favour of, or against the Manager of a company depends upon the facts of a particular case. If the Manager is found to be in actual Possession of the disputed land, there is no reason as to why an order cannot be passed in favour of or against him. In the instant case the first party, who is the Manager, has stated in his written statement, inter alia as follows :

That the 1st party submits that the 2nd party never Possessed the disputed land and there was no dispute about possession of the said land. The land under the proceedings was al] along under the possession of the 1st party and the 2nd party never possessed it...

Therefore when hp claims possession of land, if he can Prove it in my opinion "there cannot be any bar to pass an order in his favour.

5. The second submission of learned counsel of the second party petitioners is that material documents filed by the second party have been eliminated by the learned Magistrate from consideration on illegal grounds. With regard to two

documents the learned Magistrate has held as follows :

2nd party also filed one report submitted by the S. D. C. Gossaigaon. to the A. D. C, Goalpara. This is a confidential report and cannot be used as evidence in the absence of any affidavit filed by the S. D. C. himself. Similarly another private letter written to the 2nd party was filed which is also not admissible and not of evidentiary value.

The ordinary law of admissibility and proof has not been made applicable to the documents filed by the parties to a Proceeding u/s 145 of the Code of Criminal Procedure as the primary purpose of the said provision of law is to prevent the breach of the peace, and speedy disposal of the matter is necessary. The Magistrate is considering the documents filed by the parties is to see whether they relate to the land in dispute and whether they prove or tend to prove the possession of the party who has filed them. The learned Magistrate, therefore, has committed an illegality in eliminating from consideration the report of the Sub-Deputy Collector filed by the second party, With regard to the second document, having illegally held that the letter is inadmissible he could not go to consider the value of the document. In assessing the value of that document naturally he was influenced by his finding that it was not admissible. Besides I find that there are several other documents of the second party, which have not been considered by the learned Magistrate. The letter of the Divisional Forest Officer addressed to the second party. Hemendra and also the second party's reply to it have not been considered. Further Jogodish Chandra Chakrabarty, Khaeendra Chandra Rai and Dinabandhu filed affidavits on behalf of the second party. They stated in their affidavits that the second Party Hemendra has got two thatched houses and a tractor on the disputed land. These houses have been alleged to have been made for the stay of two servants and for keeping the tractor of the second party No. 1, Hemendra. in. It will be for the Magistrate to find whether these allegations are true, and whether the documents filed by the second party have any, if so what, value. But u/s 145(4) of the Code of Criminal Procedure it is mandatory for him to consider all the documents and his omission to consider material documents in the instant case had resulted in miscarriage of justice.

6. I, therefore, set aside the order of the Magistrate and remand the case for disposal in accordance with law.

7. This case is of 1969, Hearing therefore shall be expedited.