

(1984) 08 GAU CK 0014
In the Gauhati High Court

Henkholam Kuki and Others

APPELLANT

Vs

Kadapti Tangkhul and Others

RESPONDENT

Date of Decision : 21-08-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 401

Citation : (1985) CriLJ 1381

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Judgement

T.N. Singh, J.—This case has weathered 16 summers and the sun is still shining on it. Indeed it epitomises a classic example of limitation of the justicing process as also of frustration of the legislative will. As far back as in 1968, a preliminary order was passed in this case u/s 145(1), Cr. P.C. The proceeding so initiated has still to see the end of the day. Parties fought several bouts of the litigation in this Court, in the Sessions Court as well as the trial Court during the course of the last 16 years. It is anybody's guess, why they overlooked the wholesome legislative mandate that orders passed in the course of proceeding u/s 145, Cr. P.C. have a limited finality. Indeed, none cared to go to the Civil Court as fortunes fluctuated in the course of this long period. Everyone pinned hope on it to see final success in this proceeding itself.

2. Be that as if may, I must consider the submission made before me by the learned Counsel for the petitioners who has very forcefully and ably presented the case pleading my interference with the orders passed by the learned Additional Sessions Judge, on 24-11-1979, whereby trial Courts order declaring possession of the second party in the disputed land was set aside. The learned Additional Sessions Judge did not, however, remain content with that. In doing so, he proceeded further to decide the question of possession on merit and declared first party to be in possession of the disputed land on 15-2-1969, the date of amended preliminary order. He directed the parties further to establish their claim before the Civil Court in respect of the paddy seized before the

amended preliminary order was passed on 15-2-1969.

3. The first submission of Mr. Priyanahda Singh does, indeed, assail jurisdictional competence of the Court below to pass the impugned order. According to learned Counsel revisional Court ought to have remitted the matter to the trial Court instead of embarking on the hazardous exercise of dealing with the question of possession on merit. Indeed, this objection was also raised before the learned Additional Sessions Judge and he had rightly, in my opinion, rejected it. The case had been dragged on for more than 11 years and for the ends of justice he considered that it will be futile to remit the matter once again if cause of justice has to be upheld. The law on this point, as stated succinctly by this Court in Smt. Akan Bala Kalita's case (1984) 1 Gau LR 10 : 1984 Cri LJ 210, is that revisional Court does not generally interfere with the findings of facts arrived at by the trial Court while acting u/s 401, Cr. P.C., but the jurisdiction of the Court thereunder being discretionary it cannot refuse to go into facts where it appears to it that there has been, in the case, a gross failure of justice. So, it was held. It was further observed that if the findings touch any jurisdictional requirement and if the Court a requirement or takes into consideration irrelevant facts, such a finding is not binding on a revisional Court so as to deprive it of the power to correct the jurisdictional failure. Section 401 invests Courts with powers and jurisdiction exercisable by the original Court in a case where the Code does not provide for an appeal as it can act in the same manner in such cases as the Court of Appeal does to prevent a jurisdictional failure resulting in justice being denied to any party. This result can be achieved if discretion is exercised in the manner by which the Court is enabled to interfere even on facts in appropriate cases so that it is not deprived of a jurisdiction which would be co-extensive with that of the trial Court in the matter of granting relief.

4. The impugned order has been assailed by the learned Counsel on several grounds. The first ground is that the learned Additional Sessions Judge was wrong in basing a decision on a single and solitary fact which he treated as of paramount importance. The learned Additional Sessions Judge, according to learned Counsel, found fault with the petitioner, the third party, in the trial Court, for the reasons that they had not filed any written statement to state their case and stake their claim to possession after the second, amended preliminary order was passed on 15-2-69, It is true that much importance had been attached to this fact, but this objection cannot be considered to be fatal inasmuch as the learned Additional Sessions Judge did not base his decision on this ground. Indeed, he considered on merit the petitioner's case with reference to their affidavits and documents which were filed by them in support of their case. However, the important point noted about this objection I to consider the other findings of the learned Additional Sessions Judge. He held rightly, in my opinion, that though there was another written statement filed in the case, if it was filed before the preliminary order was amended There was a question of time gap and also change in the description of the proceeding land in respect of area as well as boundaries. The second written statement had, therefore, become irrelevant.

These findings, in my opinion, are unassailable. Thus, the fact remains that, there was no written statement by petitioners in the case before either Court. This is an unburnished truth and no objection can be taken to the stand adopted in this regard by the learned Additional Sessions Judge.

5. The next contention of Mr. Priyananda Singh is that although affidavits and documents filed by the petitioners were considered by the Court below those were wrongly rejected. Further grievance is that he considered merely four affidavits which were filed after the preliminary order was amended though there were some other affidavits on records which were filed earlier. To the latter objection, the short and simple answer is that he has rightly considered the material pertaining to the question before the Court, namely possession of the parties with reference to the date of the amended preliminary order dt. 15-2-69. Indeed, for the same reasons, he did not consider the affidavits filed earlier by the opposite parties, namely, the first party in the proceeding. In considering the case of both sides, he maintained parity dealing both sides evenly. As regards the other grievance, there are two aspects on which argument has been advanced. Was the learned Additional Sessions Judge right in rejecting the four affidavits of the second party on the ground that circumstances cast doubt on their genuineness? The answer is "Yes". He gave cogent reasons in saying so. I have myself perused the affidavits. He has rightly observed that the deponents signed the same in all cases on 25-2-69, but in the last paragraph of each affidavits there are recitals that the same were signed on 17th June, 69. However, even on that date the affidavits were not sworn. All affidavits were sworn, only on 25-6-69. These two reasons have iron-cast and must stand undented. As for me, it appears that over-writings are galore hi each of their affidavits. The affidavits appear to have been prepared to be sworn much earlier to the stated date, 17th June, 1969, which was an interpretation in each case. The original date in each case appears to be "19th day of December, 1968, which was before the preliminary order was amended. It is indeed, for this reason that the learned Additional Sessions Judge said that respondents before him (Second party) had not filed any affidavits in support of their claim. About the legal position, there can be no doubt that the claim must be with reference to the date of preliminary order and if that be so how fault can be found with the finding of the learned Additional Sessions Judge in this regard.

6. Learned Additional Sessions Judge considered also the third aspect, the relevance as also the effect of the documents filed by the Second party and on cogent reasons reached the conclusion that they did not avail the propounders. He discussed the documents in two sets. The first set comprised some seizure lists. From the bare perusal thereof it appeared to him that they related to a period much anterior to the date of the amended preliminary order dated 15-2-69. Indeed, if reliance on those documents was considered necessary by the party for deciding the point, rightly has learned Additional Sessions Judge held, it was for them to examine the police officer to establish the nexus between the documents and preliminary order. This was not done by the second party.

Among the second set of documents, reliance was placed by Mr. Priyananda Singh on the certified copy of the order of settlement dt. 25-4-1963. In my opinion, this has no relevance at all on question of possession of the parties on 15-2-1969, which was the moot question for decision in the proceeding. Mere settlement of land six years ago in favour of a party would not establish ipso facto that the allottees were also in possession of the land. It may barely establish the right to possess the land by the allottees, which was not, and could not, be a matter for consideration by a Court in a proceeding u/s 145, Cr. P.C. Mr. Priyananda Singh also took umbrage against the observation of the learned Additional Sessions Judge that the documents could not be considered as they were not exhibited which was only an objection raised by the other side. But, as alluded, this objection was overruled and the documents were, in fact, considered by the learned Additional Sessions Judge.

7. Therefore, in my opinion, no grievance can be made on the score of non-consideration on merit of the case of the second party. The moot point however is that whether trial Court's findings were extra-jurisdictional. To this question, happily the learned Additional Sessions Judge did address himself. He rightly concluded that the learned Magistrate erroneously held that a decision on the question of possession could be given merely on the basis of documents. This was a gross jurisdictional error and it was the duty of the learned Additional Sessions Judge to correct the same and if he did so what fault can be found with this order. Sub-section (4) of Section 145, Cr. P.C., in terms, mandates the learned Magistrate merely to decide the question of "Possession" and not any claim as respects "right to possess". He cannot consider any "evidence" not having a bearing on the question of actual "possession of the subject of dispute". There must be cogent evidence, may be oral or may be documentary, but the evidence must relate merely on the question of actual possession. In the instant case, none of the documents filed by the second party could be said to be documents which were relevant to the enquiry under Sub-section (4). This is the finding of the learned Additional Sessions Judge and, as discussed above, this finding does not suffer any infirmity. If that be so, he was also within his rights to hold that the Magistrate's consideration of the "documents" and deciding the question of possession on that basis, therefore, was unwarranted and extra-jurisdictional exercise.

8. However, the question that still survives for consideration is whether the findings of the learned Additional Sessions Judge as respects possession of the first party suffers any jurisdictional infirmity. It is necessary to examine this matter because he has made a declaration in favour of the first party in terms of Sub-section (6) of Section 145, Cr. P.C. It appears that the learned Additional Sessions Judge in arriving at his conclusion has arrived at relevant findings and his findings are based on materials and cogent reasons that the materials relied on by the first party were to be accepted. Mr. Priyananda Singh took objection to the consideration of the pattas filed by the first party. There can be no doubt that not on allotment order but a patta conferred upon a person has a legal right to

possess and patta also is an evidence of possession. That apart, he has considered other documents, namely, Jamabandis etc. He also considered the fact that the first party in whose favour he declared possession of the proceeding land had filed two written statements in support of their claim and they successfully established the case made out by them by filing affidavits and documents. He was also rightly impressed by the fact that these two written statements, filed respectively on 14-/69 and 16-10-73, both come after the amended preliminary order passed on 15-2-69.

9. For the foregoing reasons, I have no hesitation to hold that the impugned order does not suffer any jurisdictional infirmity and the same must be upheld.

10. In the result, this application fails and is dismissed. All the interim orders in this case including the stay order stand vacated.