
(1972) 08 GAU CK 0013
In the Gauhati High Court

Lairenlakpam Rajbapu Singh and Another	APPELLANT
Vs	
Wakambam Mani Singh	RESPONDENT

Date of Decision : 09-08-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 435, 439

Citation : (1973) CriLJ 1090

Hon'ble Judges : B.N. Sharma, J

Bench : Single Bench

Judgement

B.N. Sarma, J.—This is a revision petitions under Sections 435 / 439 of the Code of Criminal Procedure, directed against the order of Shri T. Hangshing. Magistrate First Class, I. E., dated 28-10-1971, passed in N. F. I. R. Case No. 7 of 1971 u/s 145, Criminal Procedure Code, declaring possession-over the disputed land in favour of the first party.

2. The proceeding was drawn up by the learned Magistrate in respect of 1.75 acres of land comprised in Dag No. 153 ot patta No. 67/1 I. E. situated at village Challou within Lamalai Police Station. Both the parties claimed actual physical possession over" the land. The opposite party herein, what was the first party in the proceeding, filed his written statement, five affidavits including his own. and four documents. The petitioner, who was the second party also filed his written statement, six affidavits including his own, and three documents. On a consideration of the written statements and their affidavits, the learned Magistrate found that the first party was in possession of the disputed land at the time of the preliminary order, and accordingly he declared possession in favour of the first party. Being aggrieved by this order, the second party has come up with the present revision petition.

3. The first contention of the learned Counsel for the petitioner, Shri A. Nilamani Singh, was that the learned Magistrate did not consider the documents filed by the parties at all, and thereby he committed an illegality. It was also contended by him that the learned Magistrate, going beyond the records, brought some

extraneous considerations to bear upon his decision in judging the veracity of the witnesses who swore affidavits on behalf of the petitioner, and thereby he committed an illegality. It was submitted by him that had the Magistrate given his due consideration to the documents filed by the petitioner, all of which were public documents and had he not taken such extraneous matters into consideration in judging the veracity of the witnesses his decision would have, possibly, been otherwise.

4. On going through the record I find that there is sufficient force in the above contentions of the learned Counsel for the petitioner. As already pointed out, the petitioner filed three documents, viz., a certified copy of the judgment in O. S. No. 31 of 1967 before the Munsiff in respect of the disputed land, where the father of the petitioner, who is since dead, was the defendant; a copy of the order of A. S. & S. T. (I. E) dated 29-5-1967 in Misc. Case No. 626 of 1964, regarding the same land, where the father of the petitioner was one of the parties and a copy of the Dag Chitha of the disputed land where it has been recorded that the petitioner's father is in possession. Except a casual observation made by the learned Magistrate in his order that he perused the documents, there is nothing in the order to indicate that he actually applied his mind to those documents. It is not mentioned in the order what were the documents filed by the parties, and whether those documents have got any bearing on the question of possession of any of the parties over the disputed land. In a proceeding u/s 145, Criminal Procedure Code, or for the matter of that, in any land dispute, documentary evidence is as much important as the oral evidence or the affidavits, as the case may be. Rather, in some cases documents are more reliable than oral evidence or affidavits in deciding which of the parties was in possession of the land. It is the bounden duty of the Magistrate to consider the documents along with the written statements and affidavits, and to see if they have got any bearing on the question of possession. It is not enough simply to say that the documents were perused. The order of the Magistrate should indicate what are the documents filed by the parties, and whether or not any of those documents throw any light as to the possession of any of the parties over the disputed land so that the higher Courts may be able to judge that the Magistrate actually applied his mind to the documents.

5. The other contention of the learned Counsel for the petitioner also has got sufficient force. Two of the persons who swore affidavits in support of the petitioner, viz., Laikhuram Tonan Singh and Thok-chom Ram Singh stated in their affidavits that they possess some land adjacent to the north of the disputed land, and similarly another witness Gaurhari Singh, who swore affidavit in support of the possession of the petitioner, stated in his affidavit that he possesses some land to the east of the disputed land. The learned Magistrate has observed in his judgment that on going through the land records in his office he found that these persons have got no land on the boundary of the disputed land and so he was unable to place any reliance on their affidavits.

6. The learned Magistrate went beyond his jurisdiction in consulting the land records in his office behind the back of the parties. He had to decide as to which of the parties was in possession of the disputed land on the basis of the written statements, affidavits and documents filed by the parties. If the Magistrate wanted to make use of the land records in his office, he should have summoned those witnesses and examined them on that point under the first proviso to Sub-section (3) of Section 145, Criminal Procedure Code and in doing so he could confront them with such land records. In that case the witnesses might have been able to explain as to how they came to possess such lands on the boundary of the disputed land, to the satisfaction of the Magistrate. Without summoning such witnesses and giving them an opportunity to explain the position, the learned Magistrate undoubtedly committed an illegality by taking into consideration the land records from his office.

7. In the result, the order of the learned Magistrate, complained of, is set aside and that case is remanded to the Magistrate for disposal in accordance with law in the light of the observations made herein above. He is directed to dispose of the case as expeditiously as possible within a period of not more than three months from the receipt of the record. Send down the records of the case immediately. The revision petition is allowed.