
(2019) 03 GAU CK 0045
In the Gauhati High Court
Case No : Criminal Petition No. 1032 Of 2017

Moinul Hoque Barbhuiya

APPELLANT

Vs

State Of Assam And 4 Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Citation : (2019) 03 GAU CK 0045

Hon'ble Judges : Rumi Kumari Phukan, J

Bench : Single Bench

Advocate : R. Rongmei, F.A. Laskar, T.U. Laskar

Final Decision : Dismissed

Judgement

Rumi Kumari Phukan, J

1. Heard Mr. R. Dhar, learned counsel for the revision petitioner. Also heard Mr. F.A. Laskar, learned counsel appearing for and on behalf of the private respondents.

2. The present petition has been filed by the complainant u/s.482 CrPC, praying for setting aside and quashing the impugned judgment and order dated 21.11.2017, passed by the learned Addl. Sessions Judge, Cachar at Silchar in Criminal Revision No.117/2017, whereby the learned Judge upheld the order dated 08.08.2017, passed by the learned Executive Magistrate, Cachar at Silchar in Case No.310M/2008.

3. Briefly stated, the present petitioner filed a complaint before the Executive Magistrate, Cachar at Silchar alleging trespass over the plot of land of the petitioner with a prayer to draw up a proceeding u/s.145 CrPC and to attach the disputed property. Accordingly the Case No.310M/2008 was registered and the learned Executive Magistrate by drawing a proceeding u/s.145 CrPC, directed both the parties to appear before the Court and to submit written statement in support of their respective claims over the disputed land. Further the learned

Executive Magistrate also attached the disputed land by passing an order u/s.146(1) CrPC, restraining both the parties from entering into the disputed land until further order.

4. The respondent filed their written statement. Thereafter examining the witnesses from both sides, the learned Magistrate held that the second party have proved their claim of possession over the disputed property and it was directed that the second party shall continue to remain in possession of the disputed property till the matter is decided by a competent Civil Court and the attachment order was vacated.

5. Being highly dissatisfied with the order of the learned Magistrate dated 08.08.2017, a revision was preferred by the petitioner and the Revisional Court by appreciating the materials on record and the evidence adduced by the parties, held that the learned Trial Court has duly appreciated the evidence on record and there was no any illegality or irregularity in the findings so as to interfere to the same and the revision was dismissed.

6. The present petition has been preferred for setting aside the impugned judgment and order passed by the learned Trial Court as well as by the Revisional Court.

7. I have heard the submission of learned counsel for both sides and perused the materials on record.

8. In his petition, the petitioner has contended that he occupied the land by way of inheritance and the disputed land was purchased by his grandfather Mubessor Ali Barbhuiya and prior to that, due to the dispute over the said plot of land, his father Kutub Ali filed a Title Suit being T.S. No.113/1956, before the learned Munsiff, Cachar at Silchar, which was decreed in their favour and there being no Appeal against the same judgment and decree, the petitioners can now be legally entitled to occupy the aforesaid land by way of inheritance. It is stated that the respondent has intentionally causing hindrance in occupying the land by the petitioner. It is submitted that the learned trial Court has without appreciating the entire matter has dismissed the petition and allowed the respondent to continue the possession of the land, which has caused serious prejudice to the petitioner and it is against the interest of justice and hence the order of both the Courts are liable to be quashed and set aside.

9. Such a contention of the petitioner has been vehemently resisted by the learned counsel for the respondent submitting that the petitioner now cannot resorted to a fact which was neither pleaded nor proved before the Court below at the earliest opportunity. So such a document and judgment and decree beyond their pleadings before the Trial Court cannot be placed and relied by the petitioner. Attention of this Court is also drawn to the findings of the Trial Court wherein the entire matter in issue has been discussed.

10. Pursuant to the submission, this Court also gone through the impugned

judgment and order of the trial Court. It is to be noted that the petitioner herein although has stated that the disputed land is his ancestral property and purchased by his grandfather but he has not produced the result of the Civil Suit that was referred above and no any document was exhibited pertaining to the judgment or land documents/revenue receipt etc. in support of his contention. On the other hand, the respondent has also adduced evidence that they are in possession of the disputed land and there was no partition of the aforesaid land and there was no any dispute since 2008. So there is no apprehension of breach of peace. It is their evidence that the disputed land is inherited by the second party which was from the share of pre-deceased Nasa Miya. The second party also exhibited the purchase deed of his father through which he enjoyed possession of the disputed land.

11. Thus the learned trial Court being satisfied that the second party have put their claim of possession over the disputed land, at the time of filing of the case and at the time of attachment, allowed the second party to remain in the possession of the disputed land, till otherwise decided by a competent Court.

12. The aforesaid findings of the Court below obviously reflect that on the basis of the evidence on record (both oral and documentary), the learned trial Court come to a finding that the respondent was in possession of the disputed land, whereas the petitioner failed to prove his possession.

13. Now at this juncture, the petitioner cannot be permitted to rely upon a document which was never produced before the Court below to challenge the aforesaid findings. Accordingly there being no illegality or irregularity in the findings of both the Forums, question of quashing the proceeding and the order will not come. The petitioner still have the remedy to pursue the matter regarding right, title and interest over the disputed land before the Civil Court of competent jurisdiction.

14. With the above observation and findings, the petition stands dismissed.

15. Return back the LCRs to the concerned Court below with a copy of this judgment.