
(1970) 06 GAU CK 0003
In the Gauhati High Court

Ngangom Tomba Singh and Others

APPELLANT

Vs

Sri Maibam Iboton Singh and Another

RESPONDENT

Date of Decision : 08-06-1970

Acts Referred:

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

Citation : (1970) CriLJ 1613

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Judgement

R.S. Bindra, J.C.

1. By order dated 28th February, 1969 the Sub-divisional Magistrate, Bishenpur, held, in a proceeding u/s 145, Cr. P. C., that the first party, M. Iboton Singh, Chairman of Potsangbam Collective Farming Co-operative Society (proposed), was in actual and physical possession of the land in dispute, measuring about 20 pans, and so was entitled to retain that possession until ousted in due course of law. The second party comprising of nine persons felt aggrieved and so went in revision to the Court of the Sessions Judge, who, by his order dated 24th of October, 1969, made a reference to this Court recommending that the order of the Sub-divisional Magistrate should be set aside and instead the second party should be declared to be in possession of the land in dispute on the date of the preliminary order, which was made on 13-11-1968.

2. The correctness or otherwise of the recommendation made by the learned Sessions Judge was hotly debated in this Court by the parties' counsel. After analysing those arguments and going through the material on record, I have come to the conclusion that the reference should be declined and the order of the Sub-divisional Magistrate should be maintained.

3. The first party had filed five affidavits and relied upon 13 documents in support of his claim that it was he and the members of his proposed Co-operative Society who had been in cultivating possession of the land in dispute

for a period of 10 years before he moved the Sub-divisional Magistrate on 8-11-1968, for restraining the second party from interfering with his possession, u/s 144, Cr. P. C. The second party, the petitioners herein, also relied upon 5 affidavits besides a certified copy of an order dated 20th September, 1966 made by the Director of Settlement and Land Records in Second Appeal No. 76 of 1966 to buttress their claim of "possession over the land. In the opinion of the trial Court, the affidavits put in by the first party constituted dependable piece of evidence to support the contention of that party.

The learned Sessions Judge however differed from that finding of the Sub-divisional Magistrate solely, if I may say so, on the basis that the order dated 20th September, 1966 made in Second Appeal Case No. 76 of 1966 had not been taken into consideration by him (Sub-divisional Magistrate). A copy of that order is marked Ext. D/1. I have gone through it twice over, It shows that the claim of M. Iboton Singh, the first party, that he had been in possession of the land in dispute for a long time and so was entitled to get his name entered in the revenue records was rejected. The decision in that appeal was founded on the local enquiry held on 19-11-1965 " by the Assistant Settlement and Survey Officer. However, the preliminary order in the present case was passed on 13-11-1968. Therefore, the situation that prevailed on 19-11-1965 could have not much relevancy by the date of the preliminary order, which was passed more than three years after the local enquiry was held, for determining who out of the two parties was in possession of the land by the latter date. Therefore, the learned Sessions Judge, I may observe, was not correct in jettisoning the case of the first party on the only ground that he was not in possession of the land on 19-11-1965. It looks obvious that he gave undue importance to that document. It anything, that document shows that even in 1965 the first party had been laying claim to possession over the land in dispute.

4. Once we consign the copy Ext. D/1 to oblivion, we are left with the written statements of the parties, the two sets of 5 affidavits filed by each one of them, and the 13 documents relied upon by the first party. The learned Sub-divisional Magistrate placed reliance on the affidavits of the first party in preference of those of the second party. After critical examination of those affidavits I have no hesitation in conceding that it looks practically difficult to place one set on a pedestal higher than that of the other. However, there is one feature of the affidavits put in by the first party which does give a little more weight to them as compared to the other set of 5 affidavits. It is that the deponents of the first mentioned affidavits have affirmed that they had joined hands with the first party in the matter of reclaiming the land and that the first party had expended a large sum of money in carrying out those operations. It is the definite case of the second party that the land had been under the plough for a period of about two years before the conflict between the parties was reported to the Sub-divisional Magistrate on 8-11-1968. Therefore, obviously the land had been brought under the plough after the order dated 17-10-1966 made in Second Appeal No. 76 of 1966. The second party has not indicated in their affidavits how and when they

reclaimed the admittedly grazing field into paddy growing land. Their affidavits are completely silent on that subject and therein lies the weakness of their defence.

5. Another fact which gives edge to the case of the first party over that of the second is that no less than 3 times before 8-11-1968 M. Iboton Singh had knocked at the door of the public authorities that the second party were out to interfere in their lawful possession over the land in dispute. Firstly, the first party filed a complaint against Nos. 1 to 7, 9 and 11 of the second party under Sections 379 and 506(1), Civil P. C. in the Court of Shri R. K. Sanatombs Singh, Magistrate First Class, Imphal. That case is still pending and the accused are on bail. Thereafter, the first party filed a case u/s 107 , Cr. P. C. against Nos, 1 to 7 of the second party and the Sub-divisional Magistrate, Bishenpur, took interim bonds from them in a sum of Rs. 500/- each. That Misc. Case bears No. 2 of 1968. Then, again, an interim bond was taken from the second party on 11-3-1968 to enable the first party to harvest the mustard crop from over the land in dispute. These proceedings taken by the first party against the second do indicate that there was some genuine grievance which the former suffered at the hands of the latter and not vice versa, and in that context, it looks more probable that the second party being out of possession has been trying to harass the other with the object of ousting it from possession over the land.

6. It is well settled that generally the High Court does not interfere in revision with a finding of fact. The reason behind that principle is that it would be futile for the Legislature to grant a right of appeal in some cases and to withhold that right in others, if the High Court were to allow conclusions of fact based on evidence to be canvassed and assailed on the footing of an appeal under the guise of revision. The Court of revision therefore ought not to interfere merely because the first Court has taken a particular view of the evidence and that view does not commend itself to it (the Court of revision). Of course, that does not amount to stating that the power of the High Court in revision is confined only to questions of law or that the High Court has no jurisdiction to entertain revisions on questions of fact. In special and exceptional circumstances it is open to the High Court to go into questions of fact with a view to do justice between the parties where the finding of fact had been arrived at by the Courts below in a manner contrary to well established principles of law, or where there is no evidence to support the finding, or where the finding arrived at is perverse or such as no reasonable man could have arrived at on the evidence produced. Applying these principles to the case in hand, I feel satisfied that the finding reached by the Sub-divisional Magistrate was not perverse, as held by the learned. Sessions Judge, and that that finding is amply supported by the evidence on record. Consequently, I see no justification for interfering with that finding which looks to be proper and sound. As a result, I decline the reference on upholding the order of, the Sub-Divisional Magistrate.