

(2017) 12 GAU CK 0050
In the Gauhati High Court
Case No : 249 of 2016

NOWSHAD ALI

APPELLANT

Vs

GOLAM MOSTAFA AHMED & ANR.

RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 145](#), [Section 397](#), [Section 401](#), [Section 144](#), [Section 107](#), [Section 146](#)

Citation : (2017) 12 GAU CK 0050

Hon'ble Judges : Hitesh Kumar Sarma

Bench : SINGLE BENCH

Advocate : S Rana

Judgement

1. This is a criminal revision petition, filed under Sections 397/401 of the Cr.PC, praying for setting aside the order, dated 13.5.2016, passed by the learned Sessions Judge, Dhubri, in Criminal Revision No. 12/2016.

2. I have perused the petition as well as the annexures furnished therewith. None appears for the revision petitioner on repeated calls. The respondents are represented by learned counsel Mr. S Rana. Therefore, I have heard learned counsel for the respondents and examined the materials placed before this court by the petitioner along with the petition.

3. The fact leading to the case is that, the present petitioners are the opposite parties in a proceeding under Sections 107/144/145 of the Cr.PC before the learned Additional District Magistrate, Hatsingimari, Dhubri, in Misc.Case No. 88/2015. In this Misc.Case, the present respondents are the applicants.

4. Learned counsel for the petitioner has submitted that in respect of land for which the dispute arose between the parties is claimed to have been possessed by the present petitioners since 20 years back after purchase of the land from its original owner. This court is aware of the fact that under the proceeding Section

145 of the Cr.PC, title of the land in dispute cannot be looked into which is the domain of the Civil Court. This court is to consider who was in possession 2 (two) months prior to the dispute as regards the possession of the land in question. On the basis of finding as to who was in the possession 2 (two) months prior to the dispute as regards the possession, in possession of the land in favour of the party entitled to it has to be declared.

5. The instant proceeding before this court is not to declare the possession of the disputed land as required under Section 145 of the Cr.PC. The issue before this court is the order, dated 30.12.2015, passed by the learned Executive Magistrate, attaching the disputed land under Section 146(1) of the Cr.PC on the basis of satisfaction recorded by him on a police report to that effect. Against this order, dated 30.12.2015, the opposite party in the aforesaid Misc.Case, preferred the revision petition before the Sessions Judge in Criminal Revision No. 12/2016. The learned Sessions Judge, vide his order, dated 13.5.2016, impugned herein this petition, set aside the order dated 30.12.2015.

6. It appears from the materials placed before this court that the learned Executive Magistrate recorded his satisfaction on the basis of a police report about likelihood of breach of peace in respect of possession of the disputed land, and thereafter, he passed the order dated 30.12.2015 by which the disputed land was attached.

7. The fact remains that this case is pending since 2015 and final decision has not been taken in the proceeding under Section 145 of the Cr.PC, as the interim order of attachment has been put to challenge before the learned Sessions Judge as well as before this court. The learned Sessions Judge, in his judgment, referred to above, has mentioned that there was no emergency for an order of attachment of the disputed land and which the learned Executive Magistrate also did not mention specifically in the order dated 30.12.2015. The police report makes it clear that there is apprehension of breach of peace between the parties and the learned Magistrate was satisfied with that report, and thereafter, passed the order of attachment. When there is a report to the effect that there is likelihood of breach of peace in respect of possession of the suit land that itself is an emergency situation to prevent the breach of peace. "Emergency" not explained in the order is not a ground for setting aside the order of the learned Executive Magistrate, dated 30.12.2015, particularly in view of the fact that there is the police report to the effect that there is likelihood of breach of peace regarding possession of the disputed land. That being so, I do not find any illegality in the order passed by the learned Executive Magistrate, dated 30.12.2015, and as such, interference by the learned Sessions Judge in the aforesaid Criminal Revision Petition and setting aside the aforesaid order dated 30.12.2015 appears to be not based on correct analysis of the law relevant in the matter.

8. Therefore, the order passed by the learned Sessions Judge is set aside and the order, dated 30.12.2015, passed by the learned Executive Magistrate is restored

to file. However, it is ordered that the learned Executive Magistrate will dispose of the aforesaid Misc.Case 88/2015 within 2 (two) months positively and a decision will be taken as to who would be entitled to possession of the disputed land in the event the right, title and interest of the parties are not taken to the Civil Court for adjudication.

9. It is made clear that if there is no civil suit pending in respect of right, title and interest over the disputed land, the learned Executive Magistrate shall dispose of the matter within 2 (two) months declaring the possession in favour of the parties, who is found entitled therefor. The criminal revision petition stands disposed of accordingly.