
(1982) 05 GAU CK 0006
In the Gauhati High Court

Rajindra Singh

APPELLANT

Vs

Smt. Promila Singh

RESPONDENT

Date of Decision : 05-05-1982

Acts Referred:

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

Citation : (1982) CriLJ 2119

Hon'ble Judges : K.M. Lahiri, J

Bench : Single Bench

Judgement

K. Lahiri, J.—This is a criminal revision u/s 401 of the Criminal P.C. 1973, for short "The Code". It is against an order of the Executive Magistrate, Silchar declaring possession of the disputed land and house in favour of the opposite party with a direction that she should be entitled to retain possession of the disputed property until ousted in due course of law.

2. Shortly put, the relevant facts are that a proceeding was initiated by the opposite party Smt. Promila Singh u/s 145 of the Code in respect of the land and house. It was inquired into and the learned Magistrate by his order dated 5-1-80 declared possession of the land and house in favour of Smt. Promila and forbade disturbance to her lawful possession until evicted in due course by a competent court. However, in revision, the order was set aside by the learned Sessions Judge. The learned Judge remitted the case back to the Executive Magistrate for rendering fresh order after carefully considering the evidence of the case. Thereupon fresh notices were issued to the parties, the Magistrate heard arguments and upheld the claim of Smt. Promila. The learned Magistrate has held that there was apprehension of breach of peace between the parties concerning actual physical possession of the disputed property. For reaching the conclusion the learned Magistrate considered oral as well as documentary evidence. The Magistrate found that the owner of the property Indramoni Singh died leaving behind Angoubi Debi and Promila (the first party). Promila was then a minor. The learned Magistrate held that Promila was in possession of the entire

property of Indramoni. On appreciation of oral and documentary evidence the learned Magistrate concluded that Promila was in actual possession of the disputed land on the date of drawal of the proceedings, and, accordingly passed the impugned order.

3. The learned Counsel for the petitioner submits that the learned Magistrate failed to appreciate the evidentiary value of the gift deed in favour of the petitioner as well as the house tax receipt. No other point has been urged.

4. This documentary evidence does not directly go to establish the factum of actual physical possession. This may be circumstantial evidence. Be that as it may, I find that the learned Magistrate has duly considered the deed of gift as well as "the house tax receipt". He has considered "the deed of gift" filed by the petitioner to bear up his claim along with the claim of Promila that the property was willed away in her favour of Smt. Angoubi Manipurini. Therefore, before the learned Magistrate the claims of the parties were based on deed of gift and will. The learned Magistrate surely could not have decided the genuineness or validity of the documents in the proceedings u/s 145 of the Code when a probate case was "sub judice". The learned Magistrate was justified in observing that the parties to the proceedings wanted to bear up their respective claim on the basis of the two documents and no further. However, he was justified in holding that the deeds had no direct bearing on "the question of actual physical possession, I hold that the Magistrate took into consideration the deed and the findings about the document are neither illegal nor unjustified.

5. Similarly he has considered "the house tax receipt". He found that the receipt was in favour of Angoubi Debi and her name was penned through, and, in her place the name of Rajindra Singh, the second party, was substituted but there was no initial of any person or authority making the substitution. Accordingly, the learned Magistrate was not satisfied that the receipt was issued in favour of the opposite party. Only one rent receipt was filed by the second party. Admittedly on that date Angoubi was alive. So the question of granting the receipt in favour of the opposite party, instead of Mst. Angoubi, could not have arisen. On these considerations the learned Magistrate could not place reliance on the said document.

6. When the learned Magistrate has reached the conclusion on appreciation of evidence, in my opinion, it is not within the powers and jurisdiction of the Court to interfere with the findings unless they are based on no evidence or they are perverse or so unreasonable that no person instructed in law could have reached the conclusions. However, the findings reached by the learned Magistrate are based on materials on record and the findings are rational. Therefore, the contention of the counsel for the petitioner fails.

7. I am of the firm opinion that ordinarily this court ought not reappreciate the evidence and substitute its own findings in the place of those of the trial court in revisions arising out of proceedings u/s 145 of "the Code", unless there has been

a miscarriage of justice. The fundamental reasons are (1) that the aggrieved party can obtain full and adequate relief in the civil court of competent jurisdiction; (2) that an order u/s 145(4) is just a "stop gap" or a provisional order that lasts until the right, title and interest, in respect of the disputed property are finally determined by a competent civil court; (3) that proceedings u/s 145 of the Code relate to disputes where there is likelihood of breach of peace. Section 145 falls in chapter X of the Code which deals with serious and urgent matters connected with the maintenance of public order and tranquillity. The proceedings have positive nexus with public tranquillity and they need earliest disposal to allay fears, anxieties and panic of the contending parties and others connected with such disputes. These are more or less public interest cases.

8. In the result, the petition stands dismissed.