
(1974) 03 GAU CK 0001
In the Gauhati High Court

Samurou Gur, Khansary Producers and Sugarcane Growers
Co-op. Society Ltd. and Others

APPELLANT

Vs

Santhem Ibomcha Singh and Others

RESPONDENT

Date of Decision : 22-03-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (1974) CriLJ 1096

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Judgement

Baharul Islam, J.—This reference has been made by the Sessions Judge, Manipur. It arises out of a proceeding u/s 145, Cr.P.C. and involves an area of 22 acres of land. There are three parties to the proceeding. In pursuance of the preliminary order passed under Sub-section (1) of Section 145, Cri.P.C., the three parties filed their respective written statements, affidavits and documents. The learned Magistrate, in due course, declared possession in favour of the first party.

2. Shri Imo Singh, learned Counsel appearing on behalf of the third party and supporting the reference, has made three submissions before me: (i) that the Magistrate has omitted to consider nine documents, viz., Ext. Nos. C/1 to C/9 filed by the third party, . (ii) that the learned Magistrate rejected the affidavits filed by the third party on untenable grounds, and (iii) that the learned Magistrate went beyond his jurisdiction in criticising: the correctness of the order of the Judicial Commissioner in Criminal Reference Case No. 21 of 1970 (Ext. C/2) and holding that the Judicial Commissioner had no power under the law to declare possession in favour of any party u/s 145, Cri.P.C.

3. I have been led through the letter of reference of the Sessions Judge and. also through the impugned judgment of the Magistrate. Although the Magistrate has not mentioned in his judgment exhibits No. C/1 to C/9 as such, it appears from the judgment that he has referred to and considered the contents of the documents themselves. In fact, the relevant documents are exhibits C/2, C/4, .

C/5 and C/6. Ext. C/2, is the order of the judicial Commissioner in a reference in a previous proceedings u/s 145, Cr.P.C. between some of the parties in respect: of the same land, Ext. C/4 purports to be a document showing delivery of possession in the said proceedings in favour of the present third party, Ext. C/5 is to the same effect as-of Ext. C/4. It was by way of executions of the order as per document Ext. C/4. Ext. C/6 is the Dag Chitha which covers the land in dispute. Ext. C/6 does not bear anybody's name as owner of the land, inasmuch as, the land in question is admittedly Government khas land. Exts. "7, "8 and "9 do not tend to prove possession at all. It is not correct to say that the Magistrate has omitted from consideration any material document filed by the third party.

4. Under Sub-section (4) of Section 145, Criminal P.C. it is the duty of the Magistrate to peruse and consider the written statements, affidavits and documents filed by the parties and then come to the question of possession in favour of a party, if any; but the reasons for accepting some documents and rejecting others are of the Magistrate, Even, if he goes wrong in appreciating some of these affidavits or documents that cannot be said to vitiate the order on the question of possession. The first and second submissions of learned Counsel have no substance.

5. Shri Imo Singh has taken serious-exception to the mode of treatment of the order of the Judicial Commissioner by the learned Magistrate. In fact, it appears from the impugned order of the learned Magistrate, that he did not sit on judgment on the order passed by the Judicial Commissioner as suggested by learned Counsel. What happened in this case is that with regard to the same land between most of the parties there was a prior proceeding u/s 145, Cr.P.C. in which the present third party was the first party. The matter ultimately came up before the Judicial Commissioner by way of reference and the learned Judicial Commissioner, interpreting the second proviso to Sub-section (4) of Section 145, Cri.P.C., declared the first party to be entitled to possession of the land in dispute. Against the preliminary order in the present 145 proceedings, the matter came up by way of revision before this Court and this Court in Criminal Revision Case No. 34 of 1971 considered the order of the learned Judicial Commissioner and held:

The learned Judicial Commissioner did not and in law he could not declare possession over the disputed land, in the reference case, in favour of the present petitioners as they were not party to the proceeding before the Magistrate. He declared possession only in favour of the first party in the proceeding. By virtue of the order of the Judicial Commissioner the petitioners cannot therefore claim possession over the disputed land, even if the land in the two proceedings is identical.

Both these orders, viz., the order of the Judicial Commissioner in Criminal Reference Case No. 21 of 1970 and the order of this Court in Criminal Revision Case No. 34 of 1971 were filed before the Magistrate who considered them and in the light of the observations made by the High Court he observed that the

Judicial Commissioner could not and did not declare possession in favour of any of the parties. In my opinion, there is nothing objectionable in the observation of the Magistrate, nor his consideration of the order of the Judicial Commissioner was, in any way, illegal. In my opinion, no illegality or irregularity has been committed by the Magistrate.

6. In the result, this reference has no merit and it is rejected.