
(1972) 12 GAU CK 0003
In the Gauhati High Court

Suren Das

APPELLANT

Vs

Dhanbar Ali and Others

RESPONDENT

Date of Decision : 21-12-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 439

Citation : (1973) CriLJ 1085

Hon'ble Judges : Baharul Islam, J

Bench : Single Bench

Judgement

Baharul Islam, J.—This application u/s 439 of the Code of Criminal Procedure by the first party is directed against an order passed by a first class Magistrate at Gauhati in a proceeding u/s 145 of the Code of Criminal Procedure in which possession was declared in favour of the second party.

2. The first party is the President of a Farming Co-operative Society and the second parties are also members of a Farming Co-operative Society. The first party's case is that his co-operative society owned 120 bighas of land and as it was inadequate for the Society, it applied for the disputed land measuring 183 B. 3 K. 2 Chataks, which is to the contiguous north of the first plot of 120 bighas. But as there was threat of dispossession by the second party and there was likelihood of breach of the peace, the first party prayed for a proceeding u/s 145 of the Code of Criminal Procedure. In pursuance of that application the Magistrate drew up proceedings and asked the parties to file their written statements, affidavits and documents.

Both the parties filed their respective written statements, affidavits and documents. The first party filed affidavits sworn by five witnesses and five documents. The second party filed affidavits sworn by seven witnesses and seven documents. The learned Magistrate, after consideration of the written statements, affidavits and the documents came to the finding that the second party, at the relevant time, was in possession of the disputed land and accordingly he declared their possession.

3. Shri B. K. Goswami, learned Counsel appearing for the petitioner, submits that the learned Magistrate committed two illegalities (i) he committed an illegality in considering a certified copy of an affidavit filed in another case, namely, case No. 76 (M) 70 and in considering an attested copy of a letter written by the Sub-Divisional Planning Officer of Gauhati; and (ii) that the learned Magistrate did not consider the affidavits of the first party.

4. It is not correct to say that the learned Magistrate did not consider the affidavits of the first party. In fact he has considered all the affidavits, and came to the finding that the second party was in possession. He disbelieved the first party's case, on the ground that the evidence of first party was not supported by any documentary evidence; he believed the 2nd party's case, as it was supported by documentary evidence.

5. The answer to the first contention of Shri Goswami is the decision of this court in the case of Hamendra Nath Biswas and Others Vs. Mrinal Kanti Choudhury, in which this Court held :

The ordinary law of admissibility and proof has not been made applicable to the documents filed by the parties to a proceeding u/s 145 of the Code of Criminal Procedure, as the primary purpose of the said provision of law is to prevent the breach of the peace, and speedy disposal of the matter is necessary. The Magistrate in considering the documents filed by the parties is to see whether they relate to the land in dispute and whether they prove, or tend to prove, the possession of the party who has filed them.

In the instant case the impugned judgment is, in my opinion, an exhaustive and well-considered one. In the judgment the Magistrate need not necessarily enumerate all the contents of the affidavits and documents. His duty is to peruse them and after perusal and consideration, he is to come to a decision on possession. If he does so. he complies with law u/s 145 (4) of the Code of Criminal Procedure.

6. No error has been committed by the learned Magistrate.

In the result this application fails and is rejected. The rule is discharged.