

Nilima Barman Vs. Ratima Barman

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Court : Guwahati

Decided On : Jan-11-2002

Judge : R.S. Mongia, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Revision No. 312 of 1995

Appellant : Nilima Barman

Respondent : Ratima Barman

Advocate for Def. : None

Advocate for Pet/Ap. : G.P. Bhowmik, B.C. Bhattacharjee and B.K. Bora, Advs.

Disposition : Revision allowed

Prior history : R.S. Mongia, C.J. 1. Heard Mr. G. P. Bhowmik, learned counsel for the petitioner Nobody has put in appearance on behalf of the respondent, Smt. Ratima Barman. 2. This petition has been filed under Section 482 of the Criminal Procedure Code, which arises under the following facts and circumstances. 3. The respondent, Smt. Ratima Barman, had moved an application under Section 145 of the Cr P.C. before the Deputy Commissioner, Kamrup (Executive Magistrate, Guwahati) on 10.7.1989 against Smt. N

Judgement :

R.S. Mongia, C.J.

1. Heard Mr. G. P. Bhowmik, learned counsel for the petitioner Nobody has put in appearance on behalf of the respondent, Smt. Ratima Barman.

2. This petition has been filed under Section 482 of the Criminal Procedure Code, which arises under the following facts and circumstances.

3. The respondent, Smt. Ratima Barman, had moved an application under Section 145 of the Cr P.C. before the Deputy Commissioner, Kamrup (Executive Magistrate, Guwahati) on 10.7.1989 against Smt. Nilima Barman (now petitioner). It was averred in the petition before the Executive Magistrate that the petitioner before the Executive Magistrate., i.e., Smt. Ratima. Bamiano is the wife of late Krishna Ram Barman and co-owner of a plot of land measuring 1 Bigha 3 Kathas 9 Lechas, covered toy Patta No. 235, Day No. 933, in village Singimari, Mouza Pub-Bongshor, and further alleged that she was in possession of the said land till 15.5.1989. She was away from her house on 15th and 16th May. 1989. On 17.5.1989, when she returned, she found that the 2nd parry, i.e., the present petitioner, Smt. Nilima Barman had constructed a house on the land aforesaid, even though she had no right, title or interest over the said property. Despite requests, the 2nd party, i.e., the present petitioner, had refused to vacate the land in question. The matter was brought before the Singimari Gaon Unnayan Samity, which deliberated upon the matter on 31.5.89 tout the efforts of the said Samifcy failed. An ex parte order was passed on 10.7.1989 by the Executive Magistrate drawing up a proceedings under Section 145 Cr PC and an order of attachment of the land mentioned in the Schedule to the order was passed asking the parties to appear before him on 27.7.1989. The order was that 'in view of the emergency the disputed land mentioned in the schedule is hereby ordered to be attached Under Section 146 Cr PC prohibiting entry of both the parties excluding dwelling houses ingress and outgress to A to'. The schedule of the property is as follows :

The entire land of patta No. 235 Dag Ho. 933 Village Singimari, Mouaaa Pub-Bongshor. P. S. Hajo excluding the house and its ingress and outgress.'

4. After both the parties appeared, an order was passed by the Executive Magistrate on 10.4.1992, inter alia, holding that the 2nd party, i.e., the present petitioner, had forcibly occupied the land in dispute and in fact the 1st party was in possession before she was dispossessed forcibly by the present petitioner (2nd party before the Executive Magistrate). The concluding portion of the final order reads as under:

The first party shall enjoy the possession over the disputed land till a competent court passes order and/or otherwise evicting the first party from the land in the process of law. The second party is prohibited from causing any sort of interference in peaceful possession and enjoyment of the disputed land by the first party. O.C., Hajo P.S. shall put the first party into the possession of the land shown below by removing man and materials therefrom.

Inform O.C., Hajo P.S. for the execution of the order and to report compliance.

Given under my hand and seal of this court on this 10th day of April, 1992.'

5. Against the aforesaid order, the 2nd party, i.e., the present petitioner, filed a revision petition under Section 397/399, Cr PC, before the Additional Sessions Judge, Kamrupe. However, the same was dismissed on 30th March, 1995, holding that the Executive Magistrate had come to the conclusion after appreciating the evidence and the same did not call for any interference in revision petition.

6. The learned counsel for the petitioner argued that though second revision is not maintainable under the Cr PC against the order of the Addl. Sessions Judge, yet he submitted that the present petition was filed under Section 482 Cr PC, inasmuch as on the evidence of the complainant petitioner before the Executive Magistrate, no case for invoking the powers under Section 145/146 Cr PC had been made. He has taken me through the evidence, which he has put on record, as also the petition filed by the respondent (the first party before the Executive Magistrate). He argued that admittedly the petitioner was a co-owner in the entire land mentioned by the petitioner (first party). Even if without partitioning the land the petitioner constructed on some portion of the land, it did not debar the present petitioner (the 2nd party before the Executive Magistrate) to make any

construction. Moreover, he referred to the evidence of PW 1 wherein the said witness stated that the 2nd party (the present petitioner) was staying on the disputed land by constructing house from about 8/10 years back. According to the petitioner's counsel, it is not only the question of mis-appreciation of evidence but in fact, it is a case where there is no evidence regarding the present petitioner having encroached upon any land belonging to the petitioner before the Executive Magistrate.

7. When this revision petition was admitted, even at that stage nobody -had appeared for the respondent (the 1st party before the Executive Magistrate) and even today, none has appeared to oppose this petition. The Motion Bench had ordered that the status qua regarding possession be maintained between the parties.

8. After hearing the learned counsel for the petitioner, I am of the view that this is a fit case in which jurisdiction under Section 482, Cr PC, should be exercised, by this Court, inasmuch as, I am of the opinion that there is no evidence to come to the conclusion as arrived at by the Executive Magistrate. If the present petitioner is a co-owner, then she is a co-owner on each inch of the land owned by the two co-owners and in that eventuality the question of invoking the provisions under Section 145 Cr PC would not arise.

9. For the foregoing reasons, I accept the revision petition and quash the order of the Executive Magistrate, dated 10.4.1992. as also the order of the Additional Sessions Judge, Kamrup, dated 30.3.1995. The record of the Sessions Court which has been received, be sent back.

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