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Court : Guwahati

Decided On : Aug-20-1963

Judge : T.N.R. Tirumalpad, J.C.

Appellant : Jitendra Kumar Baidya and ors.

Respondent : Surendra Kumar Seal

Judgement :

T.N.R. Tirumalpad, J.C.

1. I see no reason at all to interfere in this revision petition. The respondent as first party filed an application under Section 144, Cri.P.C. before the magistrate on 1.7.1960 against the petitioners and on a police report called for by the magistrate, he passed an order on 10.9.1960 under Section 144 prohibiting any interference by the petitioners in certain lands described in the petition. The petitioners thereupon appeared before the magistrate on 21.9.1960 and after hearing the parties, the magistrate on 24.9.1960 drew up proceedings under Section 145, Cri.P.C. as he found that there was dispute regarding the land and he put the property under attachment. After holding the enquiry under Section 145, Cri.P.C. he came to the conclusion that the respondent was in possession of the land and he directed the attached land to be handed over to the respondent and he called upon the petitioners not to disturb such possession. Against that the petitioners went up in revision to the Sessions Judge. But the Sessions Judge dismissed the revision and refused to make a reference to this Court as, in his opinion, the

magistrate was correct. Now they have come up in revision to this Court.

2. The respondent's case was that the lands in question were joint family lands of three brothers namely, himself, late Sashi Kumar Seal who died about 15 to 16 years back and late Dwarika Seal who died in 1953 and that after the death of his brothers, he as the sole surviving brother was managing the lands on behalf of the joint family consisting of himself, the sons of Sashi Kumar Seal and the widow of Dwarika Seal, one Sishu Bala Seal. His further case was that this Sishu Bala Seal whose share of the paddy was being given to her was living with him till 1959 when she left the place and she executed a borga kabuliyat in respect of the entire lands, as if the entire land belonged to her, in favour of the petitioners for a period of 9 months from 30.6.1960 and they were trying to disturb his possession and hence, he had to get the protection of the Court. The petitioners' case was that the lands belonged to Sishu Bala Seal as property inherited from her husband, the late Dwarika Seal, that she was in possession exclusively of the said properties and that she had given the lands on lease to the petitioners and that they were in possession of the same.

3. 39 affidavits as well as documents in support of the case that the properties were joint family properties and were in the possession of the respondent were filed by him, while 20 affidavits were filed in support of the petitioners' case. The magistrate considered the documents and also the affidavits on both sides and came to the conclusion that the respondent was in possession as joint family Karta. On the question of possession I see no ground at all to interfere with the magistrate's order. The respondent had come to Court as soon as Sishu Bala Seal executed the kabuliyat in favour of the petitioners and they attempted to interfere with his possession. The respondent had also shown through documents and affidavits that he was in possession on behalf of the joint family. As for the petitioners, it was clear that they never got possession on the strength of the kabuliyat executed by Sishu Bala Seal in their favour and further that their kabuliyat was only for a period of 9 months which period had expired even by the end of March, 1961. Thus one cannot understand how they could file the present revision petition at all.

4. What was however argued before me was that since the respondent's case was one of possession on behalf of the joint family, the magistrate should not have taken proceedings under Section 145, Cri.P.C. but that his proper procedure was to take action under Section 107, Cri.P.C. if he found that the respondent was in possession and that the petitioners were interfering with his possession, thereby creating apprehension of breach of the peace. I am really unable to understand this argument. There is no hard and fast rule that when the Karta of a joint family applies for protection against breach of the peace by a member of the joint family, the magistrate should not proceed under Section 145, Cri.P.C. at all. Further it is not the case of the petitioners that the lands were joint property.

The real position is that the respondent was-claiming possession on the ground that as Karta of the joint family he was in possession of the joint family lands. One of the members of the alleged joint family namely, Sishu Bala Seal was disputing that the lands were joint family lands and she was claiming that they were her exclusive lands and that she was in exclusive possession of the same and on that basis she had executed the borga kabuliyat on 30.6.1960 in favour of the petitioners. Immediately on the execution of this borga kabuliyat the respondent came to Court fearing breach of the peace at the hands of the petitioners. Under such circumstances, the magistrate has necessarily got to decide whether the respondent was in possession as stated by him as Karta of the joint family or whether the petitioners got possession as tenants of Sishu Bala Seal who was claiming exclusive title and possession to the lands. I think that the magistrate was right in proceeding under Section 145, Cri.P.C. and in deciding the question. The magistrate had enough materials before him to come to the conclusion.

I may mention that Sishu Bala Seal was not made party to the proceedings. This was evidently because Sishu Bala Seal did not herself come on the scene and attempt to disturb the possession of the respondent, but had set up the petitioners. In any case the magistrate had to decide the question and once the magistrate decides it on the merits, this Court will not interfere in revision. After all the finding given by the magistrate is only in the summary proceeding and Sishu Bala Seal or the petitioners, if they are affected by the finding of the magistrate, can always establish their right to their possession in a Civil Court. I see no ground to interfere

at all in the presenter proceedings. The revision petition is dismissed.

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