

Present:
 Mr. Justice Md. Rais Uddin
 and
 Mr. Justice Md. Ruhul Quddus

Criminal Revision No. 879 of 1993

Afruj Miah
 ... Petitioner

-Versus-

Jira Miah and another
 ...Opposite Parties

No one appears for the petitioner

Mr. Abdullah Al Mamun, D.A.G.
 ... for opposite party No.2

Judgment on 5.10.2011

Md. Ruhul Quddus, J:

This Rule at the instance of the first party-petitioner in a proceeding under section 145 of the Code of Criminal Procedure was issued to examine the legality of judgment and order dated 8.4.1993 passed by the Additional Sessions Judge, Habiganj in Criminal Revision No.67 (1) of 1987 allowing the same and thereby reversing those dated 20.12.1986 passed by the Upazila Magistrate, Bahubal, Habiganj in Miscellaneous Case No.112 of 1986.

Facts relevant for disposal of the Rule, in brief, are that the petitioner as first party filed an application under section 144 of the Code of Criminal Procedure (subsequently converted to a proceeding under section 145 of the Code) before the Upazila Magistrate, Bahubal, Habiganj on 2.11.1986 against opposite party No.1 Jira Miah stating *inter alia* that the opposite party along with his brothers were trying to take forcible possession of the case land (as

described in the 1st and 2nd schedules of the miscellaneous case). He claimed title over the case land by way of inheritance from his father Idris Ali and asserted his exclusive possession over 42 decimals of land out of 62 decimals appertaining to plot No.1174 (as described in the 1st schedule), and 116 decimals of land appertaining to plot No. 1181 (as described in the 2nd schedule). The remaining 20 decimals of land in plot No.1174 was mortgaged to one Didar Ali, who was in possession over the same.

On receipt of the application, the learned Upazila Magistrate by his order dated 2.11.1986 directed the Officer-in-charge, Bahubal Police Station to make an inquiry whether the allegations of the petitioner were true. After completion of inquiry, the Officer-in-charge submitted a report on 12.11.1986 in favour of the petitioner, considering which the Upazila Magistrate converted the matter to a proceeding under section 145 of the Code, attached 116 decimals of land appertaining to Plot No.1181 (described in the 2nd schedule) and appointed the Thana Revenue Officer, Bahubal as a receiver thereon. After so attachment the petitioner filed an application for amendment shifting his claim of possession from 116 decimals to 73 decimals of land in the 2nd schedule. He further amended that the remaining 43 decimals of land in the 2nd schedule was transferred earlier to one Siddique Ali.

Opposite Party No.1 as second party appeared and filed a written statement denying the possession of first party-petitioner over the case land. His specific case was that the original owner late Keramat Ali died leaving behind his son Idris Ali (father of the petitioner) and daughter Jhalak Chand Bibi, who died living behind her son Zahiruddin and two daughters, Kalom Chand and

Parijan Bibi. Thereafter the said Idris Ali died living behind his widow Hasena Banu, daughter Rupchand Bibi and six sons including the petitioner. The said heirs of Idris Ali made an amicable partition of his left out property and the land in 1st schedule fell in the share of Hasena Banu, Ayub Ali (another son of Idris Ali) and Rupchand Bibi, who transferred the same to opposite party No.1 Jira Miah by a registered sale deed dated 20.2.1974. While in peaceful possession and enjoyment over the same, the said Jira Miah sold it to Didar Miah on 3.10.1978. Subsequently the said Didar Miah retransferred the land to Jira Miah by a registered sale deed dated 23.7.1986. The land in 2nd schedule to the extent of 46 decimals fell in the share of Kalom Chand, who sold it to Jira Miah by a registered sale deed dated 1.10.1986 and thus the said Jira Miah acquired title over 88 decimals of land in total and got possession thereof. In spite of the fact that opposite party was in possession over the case land, the police being bias furnished a false report in favour of the petitioner.

After conclusion of hearing, the Upazila Magistrate found the petitioner in possession over the case land and directed for restoration of possession of entire land in his favoure and give him the produce with sale proceeds, if any by his judgment and order dated 20.12.1986. Against the said judgment and order, opposite party No.1 filed Criminal Revision No.67 (1) of 1987 before the Sessions Judge, Habiganj, which was ultimately heard by the Additional Sessions Judge, Habiganj. The learned Additional Sessions Judge after hearing the parties allowed the same on setting aside the judgment and order dated 20.12.1986 of the Upazila Magistrate holding that opposite party No.1 was in possession over 88 decimals of land in the two schedules and accordingly

directed to release the attached property and to deliver possession of 42 decimals of land from the 1st schedule, and 46 decimals of land from the 2nd schedule to him (opposite party No.1) by judgment and order dated 8.4.1993. For better appreciation, relevant portions of the judgment are quoted below:

(a) ...27/11/86 Bs ZwiitL 1g c¶i GK `iLv`-`vLj μtg D³ 1181 `v¶Mi tμvKveø 1.16 kZK Rigi A`i .73 kZK RiggtZ `Lj `vex Ktib wKš'Zr`fZj weÁ g`wRtòU we¶ivaxq RiggtZ 1g c¶i `Lj AvtQb gtg`mòvš-Mòb Kwiqv 1181 `v¶Mi tμvKveø 1.16 kZK Rig mn mvKj` we¶ivaxq Rigi `Lj 1g c¶i AbKtj n`vš† Kivi wbt`R còvb KwiqvAvtQb| ZvB Bnv m̄úó th, 2q Zckxtj i 1181 `v¶Mi mvKj` 1.16 kZK tμvKveø RiggtZ 1g c¶i `KZ gtZ 1g c¶i `Lj bv `vKv `fZj weÁ g`wRtòU m`úv`teAvBbxfvte D³ 1181 `v¶Mi tμvKveø 1.16 kZK Rigi `Lj 1g c¶i AbKtj ešvBqv t`l qvi wbt`R còvb KwiqvAvtQb| ZvB Zvni c`vwi Z we¶ivaxq Avt`kw teAvBbx Ges ewZj thvM` c`Zxqgvb nq|

(b) ...2q c¶i `vLj x 20/2/74 Bs ZwiitLi `wj nBtZ t`Lv hvq th, gvgj vi Rigi gj gwj K Bv`Q vggv weaev `x nvtQbv, Kb`v ifc Pvb weve Ges c̄ AvBqte Avj x 1g Zckxtj i 1174 `v¶Mi mvKj` .62 kZK Rig wRiv vggvi (1bs 2q c¶i) wBKU 1974 mtb weμq Ktib| cti D³ wRiv vggv 3/10/78 Bs ZwiitL `wj gtj 1g Zckxtj i 1174 `v¶Mi .62 kZK Rig w`vi vggv I iv³/₄v†Ki wBKU weμq Ktib| cpivq Avt iv³/₄vK I w`vi vggv 30/6/86 Bs ZwiitL m`úv` Z Kejv gtj 1g Zckxtj i 1174 `v¶Mi Lwi`v .62 kZ kZ†Ki Kv†Z .42 kZK Rig 1 bs wZxq c¶i wRiv vggvi wBKU weμq Ktib Ges w`vi Avj x Aewkó .20 kZK RiggtZ `Lj `v†Kb|...1g c¶i 3bs mv¶x dwi` vggv (1g c¶i Avd†ivR vggvi dclvZ fvB) Zvni tRivq m̄bw` Kwiqv etj b th, bvwj kv 1g Zckxtj i .20 kZK Rig Avd†ivR vggvi gv I tevb wRiv vggvi wBKU weμq Ktib Ges cti wRiv vggv w`vi vggvi wBKU weμq Ktib| 4bs mv¶x Zvni tRivh `Kvi Ktb th, 1g Zckxtj i .62 kZK Rig 1bs wZxq c¶i 1974 mtb 1g c¶i gv, fvB I tevtbi wBKU nBtZ wKwbqvwQj ewj qv wZwb

i'wbqv#Qb Ges H Rwg nB#Z .20 kZK w`vi wgvvi wBKU weµq Kwi qv#Qb Ges w`vi tnv#mb D³ Rwg#Z `L#j Av#Qb| 4bs mv#x Zvni tRivq Avi I `Kvi K#i b th, 1g c#i eev gviv hvl qvi c#i Zvni i fvB# i g#a" fvM ev#Uvqviv nBqv#Q| 1g c#i 7bs mv#x Zvni tRivq etj b th, Bw`Q wgvv gviv hvl qvi c#i Zvni I qwi kMb#K c_K c_K fv#e nvj Pvl Kwi #Z #`wLqv#Qb| 7bs mv#x Zvni tRivq Avi I etj b th, 15/16 kZK Rwg w`vi tnv#mb wRiv wgvvi wBKU nB#Z Lwi` K#i b| 7bs mv#x Zvni tRivq Av#iv etj b th, 1g Zck#j i Rwg 1bs 2q c#i 10/11 ermi Av#M wKwbqv#Q#j b evj qv wZwb i'wbqv#Qb| 1g c#i 8bs mv#x tRivq etj b th 1974 m#b 1bs 2q c#i wRqv wgvv 1g Zck#j i .62 kZK Rwg wKwbqv#Qj , wKwbqv H Rwg Pvl Kwi qv#Qj |

(c) ...1g c#i `iLv-Ges 1bs mv#xi Revbew` nB#Z t`Lv hvq th, we#ivaxq 1174 `v#Mi cw#ogv#k i .20 kZ#K w`vi Avj x `L#j Av#Qb Ges D³ w`vi Avj xi ce#k .42 kZ#K 1g c#i `L#j Av#Qb| A_P 1g c#i 2-7 bs mv#xMY c#Z#KB etj b th, 1g c#i `Lj xq 1g Zck#j i Rwg i cw#ogv#k gvg` Dj # I qwi kMb `L#j Av#Qb| ZvB Bnv m#uó th, 1g c#i 2-7 bs mv#xMb c#Z#KB 1174 `v#Mi cw#ogv#k w`vi Avj xi `Lj xq .20 kZK mn mv#Kj` .62 kZ#K 1g c#i `L#j `vKvi `vex c#yb Kivi tP#v Kwi qv#Qb| hw` c#KZ c#i 1g c#i 2-7 bs mv#xMb 1174 `v#Mi cw#ogv#k w`vi Avj xi `Lj xq .20 kZK ev#` ew#K .42 kZ#K 1g c#i tK Pvl evm Kwi qv `Lj Kwi #Z #`wL#Zb Z#e Zvni v Aek`B D³ 1174 `v#Mi Rwg#Z 1g c#i `Lj xq Rwg i cw#ogv#k w`vi Avj x `L#j Av#Qb evj #Z cw#i #Zb| wKŠ' Zvni bv evj qv 1g c#i 2-7 bs mv#xMb c#Z#KB 1g c#i `Lj xq Rwg i cw#ogv#k gvg` Dj # I qwi kMb evj qv w`vi Avj xi `Lj xq .20 kZK mn 1174 `v#Mi mv#Kj` .62 kZ#K 1g c#i `L#j Av#Qb ej vi tP#v Kwi qv#Qb| 1g c#i 8bs mv#x 1g Zck#j I w#Zxq Zck#j i Rwg#Z 1g c#i `L#j Av#Qb `vex K#i b| wKŠ' 8bs mv#x 1g c#i `Lj xq Rwg i tP#v x evj #Z cv#i b bvB| hw` 8bs mv#x 1g c#i #K `Lj Kwi #Z #`wL#Zb Z#e wZwb 1g c#i `Lj xq Rwg i tP#v x D#j #Kwi qv D³ tP#v xfv# Rwg#Z 1g c#i `L#j Av#Qb evj #Z cw#i #Zb| wKŠ' wZwb Zvni etj b bvB| ZvB Bnv m#uó th, 1g c#i 2-8 bs mv#xMb 1g Zck#j i

RwgtZ 1g cfti `Lj bv t`wLqvB 1g `Ljt AvtQ ewj qv mvfi` c0vb Kivi tP0v Kwi qvtQb| ZvB 1g Zckxtj i RwgtZ 1g cfti `Lj msµvš-2-8 bs mvfi xi e³e` wek/mthvM` bñ|

(d) ...ZvB 1g cfti 1g Zckxtj i RwgtZ `Ljt `vKvi `vex 1g cfti mvfi xMñbi Revbew` i Avtj vtKB c0wvZ nq bv| eis 1g cfti 1/2/3/4/7/8 bs mvfi xi Revbew` i Avtj vtK 1g Zckxtj i RwgtZ w0Zxq cfti `Lj c0wvZ nq| 2q cfti 1-5 bs mvfi xMb 1g Zckxj RwgtZ 2q cfti `Ljt AvtQb `vex Kti b| 1g Zckxtj i RwgtZ 2q cfti `Lj c0wvZ nBqvQ|

Challenging the said judgment and order dated 8.4.1993 passed by the Additional Sessions Judge, Habiganj the first party-petitioner moved in this Court with the instant criminal revision under section 561A of the Code and obtained the Rule with an ad-interim order of stay.

This criminal revision has been appearing in the daily cause list for several days with name of the learned Advocate for the petitioner. Today it is taken up for hearing but no one appears, although the learned Advocate for the petitioner Mr. Kawsar Ahmed Halim appeared on 18.9.2011 and took adjournment for a week.

Mr. Abdullah Al mamun, learned Deputy Attorney General appearing for the State submits that the learned Additional Sessions Judge on proper consideration of evidence of both the sides arrived at definite finding that opposite party No.1 was in possession of the case land and directed the receiver to deliver possession of the land in his favour. There is nothing illegal to interfere with by this Court in exercise of its inherent power under section 561 A of the Code.

We have gone through the revisional application, and the judgments of the Courts below. The record was not called for at the time of issuance of the Rule, therefore we are not in a position to examine the evidence on record to see whether there is any non-consideration of evidence. Since the petitioner does not appear to press the Rule, we are also not in a position to know whether any suit whatsoever was filed in respect of the case land by either of the parties. It appears from the judgment of the Upazila Magistrate that he had allowed the miscellaneous case in favour of the petitioner on the basis of oral evidence of the P.Ws, but did not consider their statements made in cross-examinations, which indicate the possession of opposite party over the case land. It further appears that during pendency of the miscellaneous case, the first party-petitioner amended his petition and shifted from his claim of possession from 116 decimals to 73 decimals of land, which badly weakened his case. The petitioner had claimed possession over 73 decimals of land out of 116 decimals in the 2nd schedule, while the Upazila Magistrate allowed the case and directed the receiver to hand over the entire 116 decimals of land to him, which is an apparent error. Moreover, nowhere in his judgment, the Upazila Magistrate discussed as to how he apprehended imminent breach of peace, which was a requirement to pass an order under section 145 of the Code.

The learned Additional Sessions Judge, on the other hand, allowed the criminal revision on careful and independent assessment of evidence of both the parties and gave reasoning as to why he disbelieved the petitioner's claim of possession over the case land. The learned Judge also considered some

registered documents filed by the opposite party. It is a provision of law that documentary evidence is always better than the oral evidence.

In view of the above, we do not find any substance in the Rule and also do not find that the learned Additional Sessions Judge has committed any illegality in passing the impugned judgment, which calls for any interference by this Court in exercise of its inherent power under 561 A of the Code of Criminal Procedure.

In the result, the Rule is discharged. The stay granted at the time of issuance of the Rule is vacated.

Communicate a copy of the judgment.

Md. Rais Uddin, J:

I agree.