

GAHC010208062023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./991/2023

ISMAIL ALI
S/O LATE JOHIR ALI
R/O VILL- PASCHIM SAMARALI
P.O. CHOUDHURY BAZAR,
P.S. MURAJHAR
DIST. HOJAI, ASSAM
PIN CODE-782439

VERSUS

SAMSUL HAQUE AND ANR
S/O LT. SAYED ALI
R/O VILL- PACHIM SAMARALI
MOUZA- KOPAHBARI
P.S. MURAJHAR,
DIST. HOJAI, ASSAM

2:ISMAIL UDDIN
S/O LT. SOFIQ UDDIN
R/O VILL- PACHIM SAMARALI
MOUZA- KOPAHBARI
P.S. MURAJHAR

DIST. HOJAI
ASSA

Advocate for the Petitioner : MR. M U MAHMUD, MR. S. SUR, MR S H MAHMUD, MRS. M SAIKIA, D J BARMAN, MR S AFRIDI, MR S ISLAM

Advocate for the Respondent : MR. M R ADHIKARI (R-1,2), MS. M BORAH (R-1,2)

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 21.01.2026

- 1.** Heard Mr. M. U. Mahmud, learned counsel for the petitioner. Also heard Mr. M. R. Adhikari, learned counsel for the respondent Nos. 1 and 2.
- 2.** This criminal petition under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner praying for quashing and setting aside the order dated 29.09.2022, passed in M.R. Case No. 218/2021 under Sections 145/146(A) of Code of Criminal Procedure by the learned Executive Magistrate, Shankardev Nagar, Hojai.
- 3.** The facts relevant for consideration of the instant criminal petition, in brief, are that the respondents instituted a proceeding under Sections 145/146(A) of the Code of Criminal Procedure, 1973 before the learned Executive Magistrate, Shankardev Nagar, Hojai bearing registration number M.R. Case No. 218/2021, *inter alia*, claiming that the land measuring 8(eight) bigha mentioned in the schedule of the case belong to them and same was mortgaged to the petitioner for some consideration. It was also alleged by the respondents that the petitioner, thereafter, fraudulently mutated his name in the records of right in respect of the same land.
- 4.** It is stated in the petition that, in fact, the aforesaid land was purchased by the father of the petitioner by executing different sale deeds on different occasions. It is further submitted that in respect of the aforesaid land, the respondents has instituted a civil suit before the Court of learned Civil Judge, Hojai and same was registered as Title Suit No. 51/2022.
- 5.** The learned counsel for the petitioner submits that by order dated

19.09.2022 passed in M.R. Case No. 218/2021, the learned Executive Magistrate, in view of the pendency of the civil suit, dropped the proceedings under Section 145 of the Code of Criminal Procedure and vacated all interim orders which were granted in the said proceedings and the case was disposed of on that day. However, surprisingly, after a few days, on 29.09.2023, the learned Executive Magistrate passed another order and restricted both the parties from entering into the disputed land in spite of the fact of pendency of civil suit.

6. The learned counsel for the petitioner has submitted that the petitioner was not aware about passing of the order dated 29.09.2022 by the learned Executive Magistrate, Shankardev Nagar, Hojai. He submits that as the order dated 19.09.2022, passed in the aforesaid proceeding (M.R. Case No. 218/2021), it was clearly stated that all earlier interim orders issued by the Executive Magistrate were vacated and the case was disposed of. Hence, under such circumstances, passing of the impugned order dated 29.09.2022 by the learned Executive Magistrate is apparently beyond jurisdiction and flagrant violation of law. He submits that he has not preferred a revision under Section 397 of the Code of Criminal Procedure as the impugned order dated 29.09.2022 has been passed by the learned Executive Magistrate going beyond the authority of law and in flagrant violation thereof. Therefore, the impugned order does not have any legs to stand and is liable to be set aside.

7. On the other hand, the learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the instant criminal petition under Section 482 of the Code of Criminal Procedure. He submits that the impugned order dated 29.09.2022 is a final order disposing of the entire 145 proceeding and as such since no appeal is allowed against the said order, it is

amenable to revisional jurisdiction under Section 397 of the Code of Criminal Procedure. He submits that when the statute provides for a particular mechanism to challenge a particular kind of order, it is not open for the petitioner to file his petition under any other provision as he has done in the instant case. He further submits that for filing an application under Section 397 of the Code of Civil Criminal Procedure, the law of limitation is applicable and such an application could have been filed only within the prescribed period of limitation of ninety days. However, the petitioner, only to escape the liability of the period of limitation, has filed his application under Section 482 of the Code of Criminal Procedure.

8. He submits that the inherent jurisdiction of this Court under Section 482 of Code of Criminal Procedure may not be invoked to facilitate a person to overcome the restriction imposed in preferring the appropriate application under appropriate provision (Section 397 of Cr.P.C.) due to the law of limitation. He submits that the High Court cannot convert the instant application to a petition under Section 397 of Cr.P.C. without making any reference to the issue of limitation. In support of his submission, the learned counsel for the respondents has cited a ruling of the Apex Court in the case of "**Vipin Sahni Vs. Central Bureau of Investigation**" reported in "**AIR 2024 SC 2237**".

9. However, the learned counsel for the respondents otherwise has fairly submitted that during the pendency of a civil suit, the Executive Magistrate could not have passed the impugned order.

10. I have considered the submissions made by learned counsel for both sides.

11. There is no dispute to the fact that a final order passed by an Executive

Magistrate in a proceeding under Section 145 of the Code of Criminal Procedure, 1973 is amenable to revisional jurisdiction of the Sessions Court as well as of the High Court under Sections 397/401 of the Code of Criminal Procedure. However, in the instant case, the facts are somewhat peculiar and are relevant for consideration of the issue as to whether the inherent power of this Court can be exercised in such cases or not.

12. In the instant case, before passing the impugned order, by order dated 19.09.2022, passed in M.R. Case No. 218/2021, the learned Executive Magistrate has disposed of the M.R. Case No. 218/2021 and has also vacated all the earlier interim orders passed by it considering the pendency of the Title Suit No. 51/2022 before the Court of learned Civil Judge, Hojai in respect of the disputed land.

13. The impugned order was passed after the said order of disposal on an application by the present respondents in the absence of present petitioner. In the impugned order, the learned Executive Magistrate has clearly indicated the fact of pendency of the title suit. However, in spite of that, after hearing only the first party, he restricted both the parties not to enter the disputed land. Since, this order was passed at the back of the first party, after disposal of the M.R. Case No. 218/2021 by its earlier order dated 19.09.2022, strictly speaking, the impugned order dated 29.09.2022 cannot be regarded as final order amenable to revisional jurisdiction of this Court under Section 397 of the Code of Criminal Procedure.

14. Under the peculiar facts and circumstances of this case, the invoking of inherent power of this Court under Section 482 of Code of Criminal Procedure, 1973 is called for and, therefore, this Court is of considered opinion that the present criminal petition under Section 482 of Code of Criminal Procedure is

maintainable.

15. As it is apparent from the impugned order itself that the said order of restricting both the parties from entering into disputed land was passed by an Executive Magistrate in a proceeding under Section 145 of Cr.P.C., in spite of having knowledge of the pendency of a civil suit between the parties. Hence, it only appears that the said order has been passed by the learned Executive Magistrate in flagrant violation of the law, and same is required to be set aside.

16. In light of the discussions made in the foregoing paragraphs and reasons stated therein as well as considering the fact that apparently the impugned order has been passed by the Executive Magistrate in flagrant violation of the law beyond jurisdiction, same is liable to be set aside and accordingly, the impugned order is hereby set aside.

17. This criminal petition is accordingly allowed.

JUDGE

Comparing Assistant