
(1889) 03 CAL CK 0018
In the Calcutta High Court

Abhayessari Debi

APPELLANT

Vs

Shidhessari Debi

RESPONDENT

Date of Decision : 13-03-1889

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1889) ILR (Cal) 514

Hon'ble Judges : Mitter, J; Macpherson, J

Bench : Division Bench

Judgement

Mitter and Macpherson, JJ.—This rule arises out of a proceeding u/s 145 of the Criminal Procedure Code instituted in the Deputy Commissioner's Court of Goalpara, between the two Ranis of the late Koomood Narain Bhop, Raja of Bijni.

2. It appears that the aforesaid Raja died on the 9th March 1883, when the second party, junior Rani, was about 19 years of age. The elder Rani, the first party, was allowed by the authorities to assume management of the estate left by the Raja, which consisted of two very extensive pergunnahs, viz., Habraghat and Khotaghat, comprising over 300 villages. It is admitted that the first party remained in sole possession of the said two pergunnahs from the death of the Raja to the month of February 1887 by receipt of rent from the tenants of the said pergunnahs. The second party lived in the Rajbari with the first party till August 1886. About that time there having arisen a serious difference between the two Ranis, the second party left the Rajbari.

3. It is alleged by the second party that the first party, for certain reasons to which it is not material in these proceedings to refer in detail, has no title to the Raj, which, by the law of inheritance, vested in her alone upon the death of the late Raja.

4. It is further alleged by the second party that she, being alone entitled to the whole Raj, took measures from the month of February 1887 to assume exclusive possession of the aforesaid two pergunnahs.

5. On the second party attempting to take possession of the two pergunnahs, the first party made an application to the Deputy Commissioner of Goalpara, to institute proceedings u/s 145 of the Criminal Procedure Code, alleging that there was a likelihood of a serious breach of the peace in consequence of the endeavours of the amlas of the junior Rani to collect rents forcibly from the tenants. The statement regarding probability of the breach of peace was confirmed by many police reports. Thereupon the Deputy Commissioner instituted the present proceeding on the 23rd of May 1887.

6. The second party moved this Court on the 28th May 1887 to set aside the order of the 23rd May, on the ground that there was no valid reason stated in it for initiating proceedings u/s 145 of the Criminal Procedure Code. A rule was issued by this Court upon that application, but it was discharged on the 28th June 1887 on the ground that, upon the materials then before the Court, there was nothing to show that the Magistrate had no authority to take proceedings u/s 145 of the Criminal Procedure Code.

7. On the 19th July 1887 the parties filed their written statements. The second party in her written statement, amongst other things, alleged that she had instituted a civil suit regarding the Raj, and that on her application, dated the 15th July a rule had been issued upon the first party to show cause why a Receiver should not be appointed to collect the rents and otherwise manage the estate left by the late Raja. She further stated that she was in exclusive possession of almost the whole of the Pergunnahs Hab-raghat and Khotaghat, the tenants having of their own accord and without any coercion paid rent to the amlas appointed by her.

8. It appears that the rule regarding the appointment of a Receiver was disposed of by the lower Court by an order appointing a Receiver as prayed for by the second party. Against that order an appeal was preferred to this Court. The Deputy Commissioner being of opinion that the appointment of a Receiver would do away with the necessity of the continuance of this proceeding, by an order dated 13th of August 1887, suspended all further proceedings in it till the disposal of the appeal against the order appointing a Receiver. But the appeal not having been heard, in consequence of frequent applications for postponements and the parties having in the meantime attempted to collect rents, the Deputy Commissioner on receipt of police reports of the likelihood of a breach of the peace occurring, by an order dated 7th of May 1888, directed that the case u/s 145 of the Criminal Procedure Code, be proceeded with. Against that order the second party made an application to this Court on the 26th May 1888. About that time, the second party also made another application to this Court praying that the proceeding, u/s 145 of the Criminal Procedure Code be wholly set aside, as she had instituted a regular suit for the establishment of her title to the Raj. Both those applications were unsuccessful and this Court directed the Deputy Commissioner to proceed with the trial of the proceeding u/s 145 of the Criminal Procedure Code.

9. The proceedings being resumed, both parties cited numerous witnesses to prove their respective allegations of possession over more than 300 villages. But the Deputy Commissioner being of opinion that it was the intention of the Legislature that a proceeding like this, instituted for the maintenance of peace, should be speedily terminated, declined to examine more than a limited number of witnesses on each side. He decided on the evidence taken by him in favour of the first party. This rule was issued on the application of the second party to set aside the order of the Deputy Commissioner of Goalpara on various grounds.

10. The questions argued before us, and which in our opinion are sufficient to dispose of this rule, are as follows:

1st.-That a single proceeding u/s 145, Criminal Procedure Code, was not intended to be applicable to a case like this in which the question of disputed possession related to more than 300 distinct villages.

2ndly.-That on the date fixed for the filing of written statements, the second party was desirous of adducing evidence to prove that there was no likelihood of a breach of the peace, but such evidence was illegally excluded.

3rdly.-That the lower Court acted illegally in declining to examine more than a limited number of witnesses on the question of possession.

11. In dealing with these questions it is to be borne in mind that the inquiry, if it had not been limited in the way in which it was limited by the Deputy Commissioner, would have lasted for a very long time, and would have been extremely expensive to both parties. That in all probability the civil suit would have been decided before the termination of this proceeding. That even if it had been decided before the disposal of the civil suit, very little advantage would have been gained thereby, as the decree in the civil suit would have made the decision on the question of possession quite ineffectual.

12. It seems to us, therefore, that even if it be established that the lower Court's action in excluding evidence was illegal, it would by no means follow that we should be justified in exercising our revisional powers on the ground of illegality.

13. But apart from this Consideration, the objections noticed above are not, in our opinion, such as would warrant our interference with the order of the lower Court.

14. With reference to the first two objections, it is sufficient answer to them, that in more than one application, which was made by the second party to this Court, in order to set aside the proceeding of the lower Court, these objections were not taken, and the last order made by this Court directing the lower Court to proceed with the trial of this case precludes her from raising them now. It has been decided by this Court that a proceeding u/s 145 is not limited to disputed possession between parties in immediate occupation of a tangible Immovable property, but is intended to apply where the disputed possession consists of receipt of rent from tenants in actual possession. That being so, we cannot limit

its operation by any rule which would depend upon the area of the property in dispute.

15. It remains now to notice the third objection. It seems to us that, having regard to the admission made by the second party, that the first party was in possession of the two disputed pergunnahs till the month of February 1887, by receipt of rent from the tenants, it would not have affected the decision of the case at all, if it had been established that the second party, as alleged by her, had succeeded in inducing the tenants of almost the whole of the pergunnahs of Habraghat and Khotaghat "to attorn to her by payment of rent to the officers appointed by her between the month of February 1887 and the following month of May, when the present proceeding was instituted." Such payment of rent for a short time would not amount to dispossession of the first party.

16. In this view we are supported by *Sarbananda Basil Mozumdar v. Pran Sankar Roy Chowdhuri* ILR Cal. 527.

17. We are, therefore, of opinion that this rule must be discharged, and it is accordingly discharged.