
(1917) 06 CAL CK 0030
In the Calcutta High Court

Hazari Khan and Others

APPELLANT

Vs

Nafer Chandra Pal Chowdhury and Others

RESPONDENT

Date of Decision : 08-06-1917

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 40 Ind. Cas. 718

Hon'ble Judges : Teunon, J;Shamsul Huda, J

Bench : Division Bench

Judgement

1. This is a Rule calling upon the District Magistrate of Nadia and the second party to proceedings u/s 145 of the Code of Criminal Procedure to show cause why the final order that was made under that section should not be set aside on certain grounds. It appears that the members of the second party obtained a money decree against one Nabai Khan and three others, his sons, and that in execution of that decree certain holdings alleged to be the property of Nabai Khan were put up for sale and purchased by the second party. One of the holdings so put up for sale is described as the kunjimari khal and four connected jalkars with a rental of Rs. 3 and it appears that in pursuance of the sale, delivery of possession was taken through the Civil Court on the 22nd June 1915. The case for the first party was that this khal and its connected jalkars did not in fact belong to Nabai Khan personally but were the property of practically the whole body of villagers, Nabai Khan and Sabdul Khan being entered in the zemindar's sherista as representative tenants. Their case then was that the possession given in July 15th to the zemindar of the second party in no way affected their rights and did not in fact affect their possession, which continued as before from June 1915 upto November 1916 when these proceedings were instituted.

2. From the judgment delivered by the Trying Magistrate it is quite clear that he did not appreciate the case set up by the 1st party, and in making his order he has proceeded solely upon the symbolical possession given to Nafar Chandra Pal,

the leading member of the 2nd party, on the 22nd June 1915. But the possession thus given is obviously of little value as against parties who set up an independent title, and even as against Nabai Khan and his descendants the value of the decree and of the delivery of possession as a piece of evidence must vary inversely with the time that has elapsed since the date of the decree and the delivery of possession thereunder. As we have said, that delivery of possession was in June 1915 and the present proceedings were instituted in November 1916. It was obviously incumbent on the Magistrate to go into the question of actual possession between those miscellaneous dates and consider the evidence tendered by the parties on that question before he could properly pass a final order u/s 145, Criminal Procedure Code. There can be no question that the petitioners have been seriously prejudiced by the way in which the trial has been held and by the way in which the Trying Magistrate has wholly discarded and left out of consideration the evidence of actual possession on the date on which the proceedings were instituted.

3. That being so, we set aside the order complained of and we direct that the proceedings be re-heard from the point at which the taking of evidence was completed in the Court of the Trying Magistrate. But having regard to the period of time that has elapsed, it will be open to either party to adduce further evidence as to possession and also, if they are so advised, evidence going to show under Sub-section (5) of Section 145, Criminal Procedure Code, that no dispute likely to lead to a breach of the peace now exists.