

(1885) 07 CAL CK 0021
In the Calcutta High Court

Hurendro Narain Singh Chowdhry

APPELLANT

Vs

Bhobani Prea Baruani and Others

RESPONDENT

Date of Decision : 13-07-1885

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1885) ILR (Cal) 762

Hon'ble Judges : Prinsep, J; Grant, J

Bench : Division Bench

Judgement

Prinsep and Grant, JJ.—This matter has already been before another Division Bench of this Court. It relates to a dispute between two zamindars regarding a forest. On a former occasion the Deputy Commissioner, finding that there were disputes -regarding this forest, directed the Collector to assume possession until one of the contending parties had established his right to it in the Civil Court. This order was set aside in March last by a Division Bench of this Court, which held that it was the duty of the Deputy Commissioner to give the parties an opportunity of proving their possession of the forest in a proceeding regularly held u/s 145, and having the parties then before it, The High Court directed such proceedings to be initiated.

2. It would have been fruitless to enquire which of the parties at the time that this order was passed was in actual possession, inasmuch as the possession was admittedly with the Collector, and therefore, as we understand it, the object of this proceeding would be to ascertain the possession as it existed at the time when the Collector took over possession.

3. The next point on which it is necessary for us to express an opinion relates to the property now in dispute. It is made the subject of complaint by the learned Advocate-General that no specific boundaries have been pointed out. But so far as we can learn from the proceedings, the parties themselves and the Deputy Commissioner who tried the case knew very well what was the subject-matter of dispute, viz., the tract of country known as this forest. We, therefore, think that

there is nothing in this contention.

4. After the Deputy Commissioner had instituted proceedings u/s 145, the second party by two petitions applied for summonses on their witnesses. Both these applications were refused by the Deputy Commissioner without any stated reasons. Now, the terms of Section 145 are somewhat obscure in this respect. They merely declare that on the day of trial the Magistrate shall receive the evidence produced by the parties respectively. It is nowhere declared in the Code whether these proceedings are to be regarded as what is known as summons cases or as warrant cases, but we are inclined to think that from their nature they should be regarded on all points of procedure as summons cases. We think, however, that although it is altogether discretionary with the Magistrate to issue summons on the witnesses cited by each party in such a case, at the same time when any one of the parties comes at a proper time before him and asks for processes to secure the attendance of his witnesses, the Magistrate should not arbitrarily refuse his assistance, as he has apparently done in the present case. The applications for summonses were in this case made on the 31st March, and the case was not decided until the 7th May, so that there was ample opportunity to serve the summonses. The Magistrate, however, has on one application stated: "The parties must produce their own witnesses. This is an application to summon no less than 99 witnesses in a proceeding u/s 145 of the Code of Criminal Procedure"; and on the other application he records a similar order, the number of witnesses here being 114 instead of 99. But the number of witnesses summoned is not necessarily a reason for refusing to grant a process. If the parties had produced 99 and 114 witnesses in Court, the Magistrate would have been bound to examine them." There is no reason to refuse an application for summons simply because a large number of witnesses is mentioned therein.

5. We think that there are no valid grounds for the next objection taken; because it does not appear that the Magistrate refused to examine any witnesses who were in attendance. The order recorded is that the pleaders did not wish to examine any more of the witnesses who were in attendance.

6. The next objection taken relates to the omission of the Magistrate to consider the documentary evidence tendered. He states it as his opinion that it has no bearing on the enquiry. As observed by the learned Advocate-General, the Magistrate has probably arrived at this conclusion because he has, refused, in another portion of his judgment, to hear the arguments of the pleaders on both sides. It is not improbable that if he had heard their arguments he would have his attention directed to the next points on which the documentary evidence was intended.

7. The Magistrate was also wrong in refusing to hear the argument of pleaders before deciding this case.

8. We think, therefore, that the case should be re-heard by the Deputy Commissioner, who will give the parties an opportunity of securing the

attendance of their witnesses if they make applications for processes within reasonable time, reserving, however, to himself the discretion of refusing the applications if he considers that the witnesses have been cited merely for purposes of vexation, delay or defeating the ends of justice, or for other valid or sufficient cause. But he should in no case refuse to issue a process without invariably recording his reasons for such refusal.