

(1901) 12 CAL CK 0004
In the Calcutta High Court
Case No : Rev. No. 1906 of 1901

In Re: Manik Mandal, Brojo Mandal, Badan Mandal and Kailas Mandal

Date of Decision : 10-12-1901

Acts Referred:

Citation : (1901) 12 CAL CK 0004

Judgement

1. The Police reported that there was likely to be a breach of the peace in consequence of claims to possession of certain lands on a char made by persons tenants of two zemindars. On this report, the Magistrate drew up proceedings under sec. 145, C. Cr. P, making these two sets of tenants parties thereto. The zemindars, their landlords, were not made parties and it does not appear that they were ever concerned in the dispute so far as it was likely to cause a breach of the peace. No doubt, they were within the explanation of the words "parties concerned in such dispute" as given in *Ram Chandro Das v. Monohur Roy I. L. R. 21 Cal. 26 (1893)*, a judgment which has been followed in other cases on which it has been held that such parties are all those who may be concerned in the subject-matter of the dispute. Whether, however because they were not made parties, an order passed as between the persons who are actually disputing is bad is quite another question. The first ground of objection taken is that in the absence of the zemindars the order of the Magistrate is without jurisdiction. We are not prepared to go so far as that. This case has been tried as between the persons who are actually disputing and the zemindars have never moved in this matter themselves, and have allowed this objection to remain in abeyance until the present occasion when it is taken not by them but by the tenants who have been unsuccessful. It is very doubtful, therefore, whether the objection is bona fide.

2. The next objection taken is that inasmuch as the tenants arrayed on different sides claimed certain specific plots, these should have been separately defined and made the subject of separate cases. Now, in a matter concerning possession of a chur, it is impossible to deal with separate possession in such a manner. There have been cases on this very subject and although it may be desirable in proceedings under sec. 145, C. Cr. P., to deal with each separate dispute

separately, it is impossible to apply to such proceedings the strict rule of procedure which has been observed in civil actions. We may refer to Kutuhal Singh v. Uma Singh I. L. R. 15 Cal. 31 (1887), Abhayessari Debi v. Shidhessari Debi I. L. R. 16 Cal. 513 (1889) and Azim Mollah v. Satoo Paramanick 10 C. L. R. 523 (1881) as cases in point. In this particular case we observe that the Magistrate has taken much care in endeavoring to find the possession of the several tenants in respect to certain specific lands and he has distinguished such possession in the final order made. We cannot, therefore, regard the objections taken as such which would require further proceedings in revision.