

(1904) 05 CAL CK 0015
In the Calcutta High Court
Case No : Rev. No. 468 of 1904

Lowsen Santal and Others

APPELLANT

Vs

Kali Charan Santal and Others

RESPONDENT

Date of Decision : 27-05-1904

Acts Referred:

Citation : (1904) 05 CAL CK 0015

Judgement

1. After hearing the vakil for the Petitioner and counsel for the opposite party and also perusing the explanation of the Deputy Magistrate we think that there is no validity in the first and third grounds upon which the rule was issued. It would, however, appear that the Magistrate contrary to the express provisions of cl. (4) of sec. 145 of the Code refused to receive oral evidence offered by the present Petitioner. The Magistrate considered that the decree in favour of the opposite party was conclusive on the question of possession. That decree is dated so long ago as 1881. No doubt it is presumptive proof of possession, but it is not absolutely impossible that the party who obtained the decree 20 years ago should have been subsequently dispossessed. The onus lies upon the Petitioner to show that he has dispossessed him, and he should not be deprived of the right which the law gives him to adduce evidence on that point.

2. We are therefore constrained to make the rule absolute upon that one ground and to set aside the order of the Deputy Magistrate and direct that he do now proceed to take such oral evidence as may be offered and thereafter dispose of the case according to law.