

(1912) 08 CAL CK 0026
In the Calcutta High Court

Manik Chandra Chakravarti and Another	APPELLANT
Vs	
Preo Nath Kuar and Others	RESPONDENT

Date of Decision : 15-08-1912

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 17 Ind. Cas. 533

Hon'ble Judges : Imam, J;Holmwood, J

Bench : Division Bench

Judgement

1. This was a Rule calling upon the District Magistrate of Howrah and on the opposite party to show cause why the order passed u/s 145, Criminal Procedure Code, should not be discharged on the grounds, firstly, that the public who claim the right of easement for one day in the year cannot be a party to Section 145 proceedings, and secondly, that constructive conditional possession is not known to the law.

2. We are of opinion that this Rule must be made absolute on both the grounds on which it was issued." It is clear that if the public are declared to be in possession of any piece of land, then both parties to the dispute are included in that term and the possession, therefore, is joint possession and the jurisdiction of the Court u/s 145 is ousted. But this is an academical question. The principal question is whether a party, who do not claim anything beyond the right to worship on one day in the year and the right to make due and proper preparations for the holding of that worship, by erecting huts for the purpose of holding the puja, can be admitted to proceedings u/s 145 of the Code of Criminal Procedure, which only deals with rights to absolute continuous possession of Immovable property. What the learned Magistrate means by constructive conditional possession we cannot conceive. If he means their right to be in possession for one day in the year or to take such steps as are necessary to prepare for the puja that is in the nature of an easement and not in the nature of possession at all and this is what the second party themselves ask for in their

petition. They say that the first party is likely to disturb them in their public worship on the last day of Baisakh, inasmuch as the first party claims the land to be his ancestral property and desires to hold a private worship of his own apparently of the same goddess Bhadrakali on that very day: and they pray that considering the emergency of the matter, the Magistrate may be pleased to take proceedings u/s 144 of the Criminal Procedure Code. And they" rely upon the case of Belagal Ramacharlu v. Emperor 26 M. 471. Now, had the Magistrate taken such proceedings, all these troubles would have been avoided. He had only to prohibit any person claiming either as proprietor or in any other capacity from interfering with the public and with the public's designated priest whose name was given in the proceedings in conducting this puja or in preparing for it. This would have settled the whole dispute; and this can easily be done year after year, if it be necessary. The proceedings can be taken a month beforehand. It would be ample for all that is necessary to meet the ends of justice. But as we have already indicated, proceedings u/s 145 are entirely without jurisdiction unless they are directed to the decision of the absolute continuing possession of either party until they are ousted by the order of the Civil Court. We, therefore, make the Rule absolute and set aside the proceedings in the lower Court. Costs ordered will be refunded.