
(1916) 11 MAD CK 0001
In the Madras High Court

Nagoji Row and Others

APPELLANT

Vs

Subbarayulu Naidu and Others

RESPONDENT

Date of Decision : 02-11-1916

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 36 Ind. Cas. 876 : (1917) 5 LW 118

Hon'ble Judges : Spencer, J

Bench : Single Bench

Judgement

Spencer, J.—The Magistrate, acting u/s 145 of the code of Criminal Procedure, has adjudicated upon a dispute likely to cause a breach of

the peace in the presence of two groups of individuals whom he designates as Party No. I and Party No. II.

2. From the Magistrate's preliminary order it appears that the individuals composing No. I party are the servants of the purchaser of the village of

Kandadu in Kalahasti Estate, and that No. II party has been administering the forest in dispute which is claimed diversely by the Kalahasti and

Karvetnagar Estates. From the description of the parties in the final order it appears that on one side we have a forest amin, a tanadar and two

forest watchers, and on the other side a forest amin and seven forest watchers.

2. The words in Section 145 of the Code of Criminal Procedure parties concerned in such dispute have been understood as including persons who

are interested in or claim A right to the property Bam Chandra Das v. Monohur Roy 21 C. 29 : 10 Ind. Dec. 652 and Queen-Empress v.

Kuppayyar 18 M. 51 Weir 106 : 6 Ind. Dec. 386.

3. The course of legal decisions as regards the right of Managers to represent

their Principals in such proceedings shows a curious development. In

Behary Lal Trigunait v, Darby 21 C. 915 : 10 Ind. Dec. 1242 Managers were held to have no interest or possession, and this was followed in

Brown v. Prithiraj Mandal 25 C. 423 : 13 Ind. Dec. 280; In Dhondhai Singh v. Follet 7 C.W.N. 825 : 1 Cri. L.J. 49 the possession of a Manager

on behalf of an absentee proprietor was recognised. In Bholanath Singh v, Wood 2 Cri. L.J. 202 the fact of a Manager being made a party instead

of his employer was held to be a mere irregularity not affecting the Magistrate's jurisdiction, even if the zemindar who employed him lived within

the Court's jurisdiction.

4. The position of a servant is rather different. He cannot be treated as in actual possession either in his own right or on behalf of another. The

possession in such a case must be with the person who pays him his monthly wages and entrusts him with the custody of the property in dispute. If

he were dismissed from service, the order passed u/s 145 of the Code of Criminal Procedure could not be treated as binding on his successor or

on his master. Nor is he a party to be evicted in due course of law by a Civil Court. In the matter of Jitbahan v. Bansrup Dhobi 6 C.L.R. 193 it

was held that an order for possession could not be made against a mere servant without his master being on the record. The possession of an

Agent or Manager has been distinguished in Dhondhai Singh v. Follet 7 C.W.N. 825 from the possession of a servant or bailiff who occupies land

in a merely ministerial character and does not acquire possession. (see also Pollock on possession in common Law, pages 18 and 56)

5. I therefore, consider that the order in question was with jurisdiction and I set it aside. Costs in this Court to be borne by party No. 11.