

(1904) 07 CAL CK 0003
In the Calcutta High Court
Case No : Rev. No. 709 of 1904

Radha Raman Ghose

APPELLANT

Vs

Baliram Ram and others

RESPONDENT

Date of Decision : 21-07-1904

Acts Referred:

Citation : (1904) 07 CAL CK 0003

Judgement

1. The first party Radha Raman Ghose, is owner of a 4 annas share and the second party of the remaining 12 annas of a colliery known as the Nandi Coal Association Colliery, The partnership was formed in 1896, and under the terms of the deed of partnership one Boladeo Ram was appointed manager, but this arrangement was altered by a revised partnership deed, dated 1st December 1902, in which Radha Raman Ghose, first party, was appointed manager jointly with Sen Chandra Ghose of the second party. It is contended by the second party, that Radha Raman Ghose never exercised the de facto management and only recently got possession by a ruse whereas Radha Raman avers that he has been the virtual manager under the second deed of partnership and that Sen Chand is only a paid-servant acting under his instructions. In this state of things the Sub-Inspector of Ranigunge reported that the second party were likely to cause a breach of the peace in attempting to forcibly oust the first party, and he recommended that an injunction should be issued on the second party under sec. 144, Cr. P. C., and that proceedings should also be taken against them under sec. 107, Cr. P. C. The Sub-Divisional Magistrate acted on this recommendation and in addition drew up proceedings under sec. 145, Cr. P. C.

2. The question we are called upon to decide is whether the latter section is applicable to a case of this nature. The Magistrate has considered the objection under three heads, viz., (1) that the parties are partners jointly owning the disputed property ; (2) that as partners they have all a right to take part in the management of the partnership business [he should have added, in the absence of any contract to the contrary; see sec. 253 of the Contract Act]; (3) that what is really contended for is not so much the possession of the property as its

management, and the possession of a manager is not such is contemplated by sec. 145, Cr. P. C.

3. The Magistrate arrived at the following conclusion : "In any opinion it is quite clear from the complaints and written statements of the two parties that both parties claim exclusive possession of the property in dispute. The fact that both parties have a right to a share in the property does not concern me. I am concerned with possession only. Nor in my opinion do the parties claim possession as managers, but as proprietors."

4. Now if the parties do not claim possession as managers on what can their claim to possession be founded? The partners in a business must jointly own and possess the partnership property. Each has a right to enter the premises and to take a share of the profits. There is no allegation of ouster of possession apart from the question of management. If the latter question be left out of consideration, there is really no dispute to be adjudicated on. And if the Magistrate were to declare either party in exclusive possession it is clear that that party would be worsted in a suit upon title and consequent right of joint possession. The partners may of course agree to limit their own control of the business by appointing a manager, but in that case the manager becomes the servant of all the partners and their possession of the land and premises is not taken away by his appointment. Thus it appears that the claim to exclusive possession in this case is quite illusory and meaningless unless it refers to the management only, which is a question outside the purview of sec. 145, Cr. P. C. We therefore make the rule absolute and quash the present proceedings.