

(1886) 11 CAL CK 0002
In the Calcutta High Court

Raja Babu

APPELLANT

Vs

Muddun Mohun Lall

RESPONDENT

Date of Decision : 27-11-1886

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : (1887) ILR (Cal) 169

Hon'ble Judges : W. Comer Petheram, C.J.;Beverley, J

Bench : Division Bench

Judgement

W. Comer Pettheam, C.J.—This was a rule which was obtained to set aside an order dated the 21st September in this year, declaring the possession of a particular person to some property u/s 145 of the Code of Criminal Procedure.

2. The Magistrate appears to have been set in motion by a police enquiry which was held in consequence of there being a likelihood of a breach of the peace in the neighbourhood, and having been so set in motion, he proceeded to enquire, as it was his duty to do under the section, who was in possession of this property, for the purpose of maintaining him in possession until the parties could get their rights decided by Civil Court.

3. This rule was obtained, so far as I recollect, upon the ground argued to-day by Mr. Woodroffe, that the Magistrate had failed to try the question of possession at all, and that he had confined his attention to the question of title; and no doubt upon the face of his judgment, it appears that, to a great extent, he considered who was the person entitled by law to the enjoyment of this property, and it was pressed before us that he had considered that to such an extent that he had lost sight of the real question before him, and which he had a right to try, namely, who was in possession at the time, and had a right to be maintained in possession under this particular section of the Code.

4. That being the case, it is for us to consider whether the Magistrate had materials before him on which he was justified in coming to the conclusion,

which he undoubtedly came to, that the person in whose favour he has made the order was in the actual possession of this property. It is true that in arriving at that conclusion he has considered who had title, and the last authority cited by Mr. Woodroffe, shows that, if he thought that material upon the question of possession, he had a right to consider it and to discuss it, and the mere fact that he considers and discusses it, does not invalidate his decision on the question of possession, provided there is evidence as to who is in possession.

5. Then on the question, whether there was any evidence of possession, the evidence is, that this person whom he found to be in possession of this particular piece of property purchased it at execution, when it was put up for sale at his instance under a decree of Court after the regular forms of attachment and advertisement had been gone through. The advertisement was made in the way sales are advertised in this country, that is, the notification of the sale was stuck up in the Court-room, and the sale took place on the date fixed in the notification, and after the purchase had been made, the form was gone through of giving possession to the purchaser. This is proved. No doubt, it may be said that this is a mere symbolical possession, but in the absence of anything else, the question is whether, under such circumstances, a Judge is justified in finding possession, if he is satisfied that possession was thus taken. "We think he is, even supposing there was no other evidence. When it is proved that a property was purchased at an execution sale, and that subsequently the peon of the Court went through the form of giving possession to the purchaser, we think that is some evidence that the purchaser took possession. It may be that the customs of the country are such that very slight evidence would suffice to rebut that, and the Magistrate had to find on the facts whether there was evidence of the slightest character ; but in this case, the Magistrate says there was other evidence on which he comments; and upon that evidence, and the other evidence to which I have alluded, he comes to the conclusion that this man took possession under his purchase, and that he had been in possession since that date, and having come to that conclusion he makes an order confirming his possession.

6. As I said before, the only question we can consider is whether there was evidence on which the Magistrate could come to that conclusion. We think there was, and therefore his order cannot be disturbed, and consequently this rule must be discharged.