

(1901) 04 CAL CK 0001
In the Calcutta High Court
Case No : Rev. No. 174 of 1901

Rajah Rameswar Persad Narain Singh and another	APPELLANT
Vs	
Harbans Singh and Others	RESPONDENT

Date of Decision : 26-04-1901

Acts Referred:

Citation : (1901) 04 CAL CK 0001

Judgement

1. The rule was issued on the Magistrate of the district to show cause why the order of the Deputy Magistrate of the 28th January last purporting to be made under sec. 145 of the Criminal Procedure Code should not be set aside, first, on the ground that the order is bad against Harbans Singh and Rameswar Singh, who claim no interest in the property in dispute. The wording of the order seems to be incorrect, and it is extremely unfortunate that counsel or pleaders who obtain these rules do not see to their drafting. On the other side of the Court whenever an order is made the drawing up of it is seen to by the attorneys concerned, and it is desirable that that practice should be followed on this side of the Court too, whether the matter is civil or criminal. Apparently the ground ought to have been that the order is bad as it has been made in favour of Harbans Singh and Rameswar Singh, who disclaim all interest in the property.

2. It appears that when the proceeding was drawn up and the parties were called upon to file their written statements, these two persons put in written statement's to the effect that they had no interest in the disputed property. Evidence was then gone into on both sides, and the Deputy Magistrate has come to the conclusion that although they disclaimed all interest, they were along with two other men in whose favour the order is made, in possession of the property in dispute.

3. We are not aware of any authority under which such an order could be made; to allow it to remain untouched might lead to serious complications. We think that the order in favour of four persons, two of whom claim no interest in the property in dispute, is bad for want of jurisdiction, and must therefore be set

aside. But it will be perfectly open to the Deputy Magistrate, if he is still apprehensive of a breach of the peace, to take any proceeding he may consider expedient in the matter. We accordingly make the rule absolute and set aside the order of the Deputy Magistrate.