

(1937) 02 PAT CK 0024

In the Patna High Court

Ram Kishun Singh and Others

APPELLANT

Vs

Faujdar Gop and Others

RESPONDENT

Date of Decision : 19-02-1937

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145

Citation : 170 Ind. Cas. 90

Hon'ble Judges : Rowland, J

Bench : Single Bench

Judgement

Rowland, J.—This is an application to revise an order u/s 145, Criminal Procedure Code, made by the Sub-Divisional Magistrate of Jahanabad, which the Sessions Judge of Gaya refused to refer to the High Court. The petitioner before me is the landlord of the village in which the disputed lands are situated. The lands appear to be not one compact block but a number of separate blocks entered in twenty one khatas of the Record of Rights and containing a considerable number of plots of land. These lands at one time were in possession of tenants as ordinary raiyati lands, there having been sixteen tenancies concerned. In respect of each tenancy the landlord had obtained a rent decree and taken out execution and purchased the holdings. Writs of delivery of possession were also taken out some in 1922, some in 1923, some in 1924, some in 1925, some in 1933 and one in 1935. On a report by the Sub-Inspector that there was dispute between the proprietor and the raiyats of the village regarding these lands the Sub-Divisional Magistrate drew up a proceeding u/s 145, Criminal Procedure Code. It is to be noted that the Sub-Divisional Magistrate did not draw up one proceeding in respect of each holding but a single proceeding covering the whole number of khatas comprising the several holdings dealt with. The proceeding called on the parties in the usual form to attend the Court of the Magistrate in person or by Pleader and to put in written statement of their respective claims. The petitioner landlord put in a written statement of his claim but not one of the tenants put in any written statement claiming any part of the disputed land. That being so, it was open to the Magistrate to proceed ex parte and hear evidence on the side of

the landlord or he might grant time to the tenants to file their written statements but he did neither of those things. He went into evidence without first ascertaining which of the tenants were claiming what lands, and he decided the proceeding as if the entire lands in suit had been claimed by the whole body of the tenants jointly. There was no such claim before him. The result includes the absurdities of passing an order declaring possession of Gobind Gop who was dead before the proceeding was drawn and declaring the possession of Aklu who before the Police disclaimed any interest in the disputed land and made no appearance in Court.

2. The order of the Magistrate must be set aside. He will call upon the members of the first party to put in their written statements showing what lands each of them claims. He will then give the parties an opportunity of adducing their evidence and he should come to a finding regarding possession if not of each individual plot at least regarding each holding.