

(1906) 07 CAL CK 0022
In the Calcutta High Court
Case No : Rev. No. 656 of 1906

Ram KISSORE ROY and Others

APPELLANT

Vs

Dwarka Nath Sen and Others

RESPONDENT

Date of Decision : 25-07-1906

Acts Referred:

Citation : (1906) 07 CAL CK 0022

Judgement

1. This is a rule obtained by the first party to a proceeding under sec. 145 of the Code of Procedure for the purpose of avoiding an order of Babu Nitya Nanda Bhar, a Deputy Magistrate with first class powers, at Jessore. Babu Nitya Nanda Bhar has declared the second party to have been in possession at the date of the institution of the proceedings. His findings are that the first party were previously in possession but the second party were the owners of the land and gradually obtained possession by inducing the tenants in occupation to attorn to them. Thus the second party were in possession at the date of the institution of the proceedings and that the first party had not been forcibly dispossessed within two months of that date. One of the grounds urged before us has reference to these findings but there is no reason for holding that they are erroneous and, even if they were, we could not interfere with them.

2. The main points relied on by Mr. Hill for the Petitioners before us are:--(1) that the initial proceeding having been drawn up by the District Magistrate, he ought to have held the enquiry and passed final order and that the transfer of the case to Babu Nityananda Bhar was without jurisdiction; and (2) Babu Nityananda Bhar having been a Deputy Magistrate at the Sudder Station could not have held an enquiry as to possession of property in the Narail Subdivision.

3. The first contention has been attempted to be supported by a reference to the case of Pandurang Govind Pujari ILR 25 Bom. 179 (1900). Jenkins, C.J., held in that case which

4. was one for the transfer by the High Court under sec. 526, Criminal Procedure Code, of a proceeding under sec. 145, that a proceeding under sec. 145 is not a

criminal case within the meaning of sec. 526 and that a case under that section cannot be transferred by the High Court from one Magistrate's Court to another under that section. The case before us is entirely different. We have not here to deal with an application under sec. 526. The District Magistrate of Jessore transferred the case of his own motion from his own file to that of a Subordinate Magistrate for purely administrative purposes.

5. The case of Satis Chundra Panday v. Rajendra Narain Bagchi ILR 22 Cal. 898 (1895) is a distinct authority in this Court for the proposition that the jurisdiction to make an order under sec. 145 or sec. 146 is not personal to the Magistrate who initiates the proceedings. This decision has been followed in Madras in the case of Pachai Ammal ILR 26 Mad. 189 (1902) and in this Court in Lalit Mohon Moitra v. Surjya Kant Acharjya ILR 28 Cal. 709 (1901) and Gurudas Nag v. Gaganendra Nath Tagore 2 C.L.J. 614 (1905). The practice of transferring cases under Chapter XII of the Code by District Magistrates to Magistrates of the 1st class subordinate to him is common and we see nothing wrong in it. We do not find any ground for disturbing the practice and the decisions of this and the Madras Court.

6. We have been asked to refer the question to a Full Bench, but there is no conflict of decision in this Court and we are not disposed to differ from the opinion expressed in the cases cited above, though we may not agree in all the reasons given by the learned Judges in them.

7. As regards the power of a District Magistrate to transfer such cases to a Subordinate Magistrate, cases under sec. 107 stand in practically the same footing as cases under Chapter XII and this Court in Surjya Kant Roy Chowdhury v. Emperor ILR 31 Cal. 350 (1904) and the Allahabad Court in King-Emperor v. Munna ILR 24 All. 151 (1901) have held that the power exists.

8. The second point raises a question which has been settled by the decision of this Court in Sarat Chundra Roy v. Bepin Chundra Roy 6 C.W.N. 552 : s.c. ILR 29 Cal. 389 (1902). That was a case under sec. 107, C.P. Code, and the District Magistrate transferred it for trial to a Subordinate Magistrate with first class powers appointed to act in the District and holding his Court at the head quarters of the District.

9. It was held that the Subordinate Magistrate had jurisdiction to try the case and sec. 12, sub-sec. (2), of the Code was relied on as giving such jurisdiction. Babu Nityananda Bhar was appointed a Magistrate with first class powers in the district and though he generally held his Court at the head quarters he had under sec. 12, sub-sec. (2), of the Code jurisdiction and powers of a Magistrate of the first class throughout the district. He had thus personal as well as local jurisdiction. As to the objection that the Deputy Magistrate dropped the original proceedings and drew up fresh ones it would appear that all he really did was to add parties and issue fresh copies of the original proceedings. This is covered by the Full Bench ruling in Kristo Kamini v. Abdul Jubbar 6 C.W.N 737 :S.C. ILR 80

cal. 155 (1902). The ground urged are not therefore sustainable and we accordingly discharge the rule.