
(1923) 01 CAL CK 0034
In the Calcutta High Court

Sajani Kanta Roy and Others

APPELLANT

Vs

Shamsher Ali Sheikh and Others

RESPONDENT

Date of Decision : 30-01-1923

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 146

Citation : AIR 1924 Cal 539

Judgement

1. This Rule is directed against an order passed u/s 146, Criminal Procedure Code, attaching the lands of a certain chur, the possession of which is disputed between the parties. The objection taken to the order is based on the fact that the Magistrate has found that both parties have erected huts on the chur and both parties have grown paddy on the chur for some length of time and cut fodder grass grown there. It is contended that on these findings the learned Magistrate ought not to have held that the disputed chur was not in possession of any of the parties. It is contended that he ought to have drawn up separate proceedings in respect of each plot of land and come to a definite finding as regards each of these plots.

2. It appears to us that on the materials before him it was impossible for the Magistrate to have taken such a course. Our attention has been drawn to a map prepared by the Sub-Inspector. But this map is not drawn to scale, and it would be impossible on that information to draw up proceedings which would describe the plots said to be in the possession of different persons with any attempt at accuracy. In the Full Bench case of Krishna Kamini v. Abdul Jabar (1903) 30 Cal. 155 it was held that proceedings u/s 145 of the Criminal Procedure Code, are not without jurisdiction, because some of the parties are concerned only with possession of a portion of the lands in dispute. At page 185 of that ruling it was held that "to require a Magistrate to hold separate proceedings in respect of each plot of land claimed by each of the raiyats, would be to require him to undertake what would be almost impossible from the intricate character of such proceedings. The jurisdiction of the Magistrate would depend upon the nature of the information? on which he has acted. If the dispute so brought to his notice is

one likely to cause a breach of the peace, it would be impossible to characterize his proceedings as without jurisdiction, because in the course of the judicial enquiry subsequently held, the claim of some of the parties related only to particular plots of land out of the entire area in question. His findings should naturally be directed to possession of particular plots, but, that he did not take separate proceedings in respect to each plot would not invalidate his entire proceedings." We are asked to hold that the whole proceedings were without jurisdiction because the Magistrate instituted one proceeding covering these different plots. This decision is sufficient to show that there was no substance in the first ground on which the Rule was issued.

3. As regards the second and third grounds which relate to the duty of the Magistrate to come to a definite finding, we hold, for the reasons already stated, that on the materials before him it was impossible for him to come to a definite finding. If the parties wished him to come to such a finding it was their duty to supply him with proper materials to enable him to do so.

4. The Rule is discharged.