

(1929) 02 CAL CK 0040
In the Calcutta High Court

Sashi Bhusan Choudhury and Others	Vs	APPELLANT
Debendra Gati Roy and Others		RESPONDENT

Date of Decision : 07-02-1929

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 147

Citation : AIR 1930 Cal 59

Hon'ble Judges : Suhrawardy, J;Graham, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This rule has been issued on the ground that Section 145, Criminal P.C., does not apply in this case. The dispute is with regard to a complete bund on the south west of the Rainagar Bil measuring about 40 feet in length with a top of about 4 cubits. Mr. Sanyal on behalf of the petitioners argues that the right claimed by his clients (the first party) is a right of easement or a right in the nature of an easement. The first party, he says, admits the land under the bund belongs to the second party but they claimed the right to put up a bund over the land of the second party to avoid overflow of water into, their land. The case as it was tried before the Deputy Magistrate was not what it is now attempted to be. The subject matter of the dispute there was a complete bund then in existence.

2. The first party claimed that the bund was theirs and that they had the right to repair it from time immemorial. The second party's case was that the bund was recently erected on their land by the first party. The dispute between the parties therefore was in respect of the bund at the time of the proceedings as to whether the bund with the land underneath should be allowed to the first party or to the second party. The contention put forward before us on behalf of the first party loses sight of the difference between a bund and the right, to erect a bund. Reference has been made in support of the contention of the first party to the case of Dowlat Koer v. Siva Pershad [1912] 15 C.L.J. 267. There the dispute was with regard to the right of a party to flow water over the land of another and

whether the other party had the right to put up a bund for obstructing the flow. There it was held that proceedings u/s 147, Criminal P.C., which were taken were properly started. That, case is not relevant for our present purposes. Reference has also been made to the case of *Empress v. Ganpat Kulwar* 4 C.W.N. 779. There the dispute was between landlord and tenant. The tenant claimed the right to put up a Gola on the land which he had leased from the landlord and the landlord claimed the right to prevent him from doing so. There the right claimed was an incorporeal and intangible right unconnected with the possession of land. In the present case the order passed by the trial Magistrate declaring the possession of the second party of the disputed place brings the case within Section 145, Criminal P.C. The subject matter of the dispute was the bund and not the right to erect a bund and we think that the proceedings are quite regular. The rule is accordingly discharged.

Graham, J.

3. I agree. In my opinion the case comes within the purview of Section 145, Criminal P.C. I may also observe that the point which has been raised before us that the proper section is Section 147 of the Code and not Section 145, was not raised before the Magistrate at the time when the enquiry was made. That being so, I do not think that we ought to entertain it in revision.