

Suresh Chandra Bhowmik Vs. Suresh Chandra Kapali

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Court : Guwahati

Decided On : Sep-02-1952

Judge : Lakshmi Narain, C.J.

Appellant : Suresh Chandra Bhowmik

Respondent : Suresh Chandra Kapali

Prior history : Lakshmi Narain, C.J. 1. The Sub-Divisional Magistrate, Sadar dropped the proceedings Under Section 145, Cr.P.C., pending in his Court on 15.3.51 and released the disputed property from attachment. The crops of the land having been auction-sold during the proceedings the amount was deposited in Court. On an application made of the second party, the Magistrate, however, ordered that as the second party had grown the paddy, he is entitled to the deposited amount. The learned Sessions Judge has fo

Judgement :

Lakshmi Narain, C.J.

1. The Sub-Divisional Magistrate, Sadar dropped the proceedings Under Section 145, Cr.P.C., pending in his Court on 15.3.51 and released the disputed property from attachment. The crops of the land having been auction-sold during the proceedings the amount was deposited in Court. On an application made of the second party, the Magistrate, however, ordered that as the second party had grown the paddy, he is entitled to the deposited amount. The learned Sessions

Judge has forwarded this Criminal Motion No. 66 of 1952 arising out of the Criminal Case No. 46 of 1950 of the Court of the Sub-Divisional Magistrate, Sadar, with recommendation Under Section 438, Cr.P.C. that the amount in deposit in Court should be kept intact until the party entitled to it establishes its right in a proper way.

2. The record of the case shows that the proceedings Under Section 145, Cr.P.C. were dropped on 15.3.51. After about 3 months on 3.6.52, the S.D.M. passed the following order on application of the party..It is reasonable to infer that the second party has grown the paddy and this party is entitled to the deposited amount for the auctioned paddy from the said land. By this order the Court is only deciding the petition who is entitled to the deposited amount.

3. After the proceedings were dropped by the Magistrate, he became functus officio and had no jurisdiction to pass any order relating to the claim of the parties or to the disposal of the property. The parties should be left to settle their rights in a competent Court or in any manner they choose. The attachment order automatically ceased. On such an application as made by the party, the proper course would be to keep the amount deposited in Court until the party entitled to it has established his right in proper proceeding. The above order passed by the learned Magistrate is, therefore, without authority.

4. As recommended by the learned Sessions Judge, the above order passed by the S.D.M. Sadar, is set aside. The amount which is in deposit in Court should be so kept until the party entitled to it establishes his right in a proper proceeding.

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