

Natabar Dutta and ors. Vs. Biseswar Rakhit and ors.

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Court : Kolkata

Decided On : Jun-08-1917

Reported in : 46Ind.Cas.412

Judge : Teunon and ;Syed Shamsul Huda, JJ.

Appellant : Natabar Dutta and ors.

Respondent : Biseswar Rakhit and ors.

Judgement :

1. In this case proceedings under Section 145, Criminal Procedure Code, Were taken in respect of certain premises which are spoken of as consisting of, first, a dalan, secondly, a hotel, and thirdly, a privy. Evidence was gone into and at the close of the case the learned Deputy Magistrate made his final order in favour of the second party in respect of the dalan and in favour of the first party in respect of the hotel. He made no order with regard to the privy. His final order is dated the 2nd March 1917. The omission in respect of the privy having been pointed out to him by the second party on the 5th March without giving notice to the first party, he makes this ex parte order:

There is evidence that eht privy goes with the dalan, so that this privy remains in the possession of the second party.

2. Now it is quite obvious that having in the first instance omitted to make any order with regard to the privy, he should not haveproceeded to supplement his first

order by this subsequent order of the 5th March without giving the other side an opportunity of being heard. It, however, is stated to us that as regards the privy evidence was in fact led, and that being so, while we set aside the order of the 5th March in respect of the privy, we also direct that the Magistrate do re-open the proceedings in so far as the privy is concerned at the stage reached when the evidence was completed, and after hearing both parties he will then proceed to pass such order as on the evidence and all the circumstances of this case he may think proper.

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