

Suruj Mian Vs. D. Tullock

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Court : Kolkata

Decided On : Feb-06-1929

Reported in : AIR1929Cal632

Appellant : Suruj Mian

Respondent : D. Tullock

Judgement :

Graham, J.

1. This rule was issued in connexion with certain proceedings under Section 145, Criminal P.C. in the Court of the Sub-Divisional Officer of Habiganj in the District of Sylhet. Those proceedings related to a large tract of land comprising about 11000 acres, part of which consisted of tea gardens and part of forest lands. Two parties claimed possession of these lands, namely, the Baraoora Tea Co. through Mr D, Tullock of Rashidpur Tea Estate, first party, and one Suruj Mean alias Abdul Rahaman Choudhury and 27 other persons being the second party. Included among the second party there were some Tipras and the present rule was issued in the interest of five of those tipras. The Sub-Divisional Magistrate made a very elaborate and careful enquiry and on a consideration of the evidence, both oral and documentary came to the conclusion that the first party was in possession of the disputed land and made an order accordingly. Thereafter some of the second party moved the Sessions Judge of Sylhet but the learned Judge rejected their

application. The petitioners then moved this Court and obtained this rule which was granted upon ground 2 as set out in the petition to this Court, which is in these terms:

For that in view of the admitted facts the second party Tipras are in actual possession of a portion of the disputed lands by erecting their homesteads and cultivating jhums the order of the Magistrate directing the first party to be in possession of the disputed lands till evicted by a competent Court of law is improper, illegal and without jurisdiction.

2. It appears that this same contention was urged before the Sessions Judge who, however, rejected it on the ground that the tipras

had not claimed possession as tenants of the first party but had put forward a claim to possession which was entirely inconsistent and mutually exclusive of the claim put forward by the first party.

3. We do not think that the view taken by the learned Sessions Judge can be supported. In proceedings under Section 145, Criminal P.C., all that the Court is concerned with is the actual de facto possession of the land in question. It does not appear to have ever been disputed by the first party that these tipras are, or were at the date of the initiation of the proceedings in possession of certain punjis or homesteads and of certain jhum land as tenants of the first party. Indeed that was also part of the case of the first party before the Sub-Divisional Officer. It may be true that the tipperas did not acknowledge the first party as their landlords and had attorned to the second party. That, however, cannot affect the right of the tipperas in a summary proceeding of this kind to be maintained in possession of the land of which they were found to be in occupation.

4. So far as petitioners 3 to 7 are concerned this rule must therefore be made absolute and the order of the Sub-Divisional Magistrate declaring the first party to be in possession of the disputed land is confirmed subject to this modification that, so far as the homesteads and jhum cultivation in occupation of petitioners 3 to 7 at the date of the initiation of the proceedings is concerned, the possession of the first party is declared through those petitioners.

5. The rule is discharged as regards the petitioners other than petitioners 3 to 7.
6. In view of the order which we have made petitioners 3 to 7 will not be liable for any portion of the costs awarded by Court below in favour of the first party.

Suhrawardy, J.

7. I agree.

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