

Radhamohan Rai and ors. Vs. Naimuddi Molla and ors.

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Court : Kolkata

Decided On : Mar-18-1918

Reported in : 45Ind.Cas.845

Judge : Chitty and ;Smither, JJ.

Appellant : Radhamohan Rai and ors.

Respondent : Naimuddi Molla and ors.

Judgement :

1. This Rule was issued at the instance of some of the 1st party to a proceeding under Section 145, Criminal Procedure Code. The leader of this branch of the 1st party appears to be Baikuntha Chandra Boy. The Rule was issued on two grounds (1): that the Magistrate had no jurisdiction to declare plots I and J to be in possession of Sadar Ali's tenants, they being no parties to the proceeding and having made no application to be made parties, and (2) that the Magistrate had no jurisdiction to declare plots E and F to be in the possession of Baser Pramanik and bis tenants, those persons being parties to the proceedings only for the purpose of Section 145 (5). The proceedings were commenced on 1st September 1917 owing to a dispute between, and a likelihood of a breach of the peace by, the present petitioners (part of the 1st party) and Naimuddi Molla, the 2nd party. It appears from the order-sheet that on 8th October 1917 two sets of persons, one claiming to be tenants of Naimuddi Molla and the other to be tenants of one Bhola Molla, applied to be made parties. The order was: 'They may proceed as under Section

145 (5), Criminal Procedure Code.' It does not appear that these persons ever came in any capacity. On 17th October 1917 Baser Pramanik and others, who have been described as the 3rd party, put in a petition claiming to be in possession of the disputed land, denying any likelihood of a breach of the peace and applying to be added as the 3rd party under Section 145 (5). They conclude, 'the case can be decided by accepting written statements and evidence from us.' The order on that petition was: 'They are to proceed under Section 145 (5), Criminal, Procedure Code.' At the hearing the contest was entirely between the present petitioners and Vaimuddi Molla. Kanohan Mondal and other members of the 1st party took no part in it. Baser Pramanik and his tenants (3rd party) filed no written statements, nor did they adduce any evidence, either in support of their alleged possession or under Section 145 (5), to show that no dispute existed. The Amin, however, in his local investigation found the houses and homesteads of the 3rd party on plots E and F. Plots E, F, I and J are all within the boundaries of the disputed land, the subject of these proceedings. As regards I and J which the Magistrate finds to be in the possession of Sadar Ali's tenants, no orders have been passed under Section 145 (6), but the Magistrate has apparently released them from attachment. As to these two plots the effect of his order seems to be to exclude them From the present proceedings. The petitioners cannot in any way be prejudiced, so far as these proceedings are concerned, by the Magistrate's finding that these plots I and J are in the possession of persons who are not parties; at the same time the more correct mode of expression would be to say that he finds these plots not to be in the possession of any or either of the parties, and that in these circumstances they should be excluded from the present proceedings. He certainly had no jurisdiction to deal with these plots as if they were in dispute between the parties.

2. The case as to E and F is rather different, since with regard to them the Magistrate has passed an order under Section 145 (6) in favour of the 3rd party. It is not disputed that the Magistrate might have added these persons, Baser Pramanik and others, as parties, but he does not appear to have done so. From the ordersheet it appears that he let them come in for a limited purpose, namely, under Section 145 (5). It does not appear that they availed themselves even of that permission. They took no part in the proceedings except to address the Court

through their Pleader. Though they alleged possession in their petition of 17th October 1917 they filed no written statement, and adduced no evidence in support of it. We are not prepared to say that it was absolutely necessary for them to do either of these things. Their object might be gained by the admission of or the evidence adduced by another party. But in the circumstances of this particular case we are of opinion that they cannot be regarded as parties in whose favour an order could be passed under Section 145(6).

3. In this view of the case we must hold that the Mdfeistrate exceeded his jurisdiction in passing such an order. We make the Rule absolute and set aside so much of the Magistrate's order as finds the possession of plots E and F and I and J in Baser Pramanik's tenants and Sadar Ali's tenants respectively, and also so much of his order as declares the 3rd party entitled to retain their possession until evicted in due course of law, and forbidding all disturbance of such possession until eviction. The result will be that these 4 plots E, F, I and J are excluded from the purview of the present proceedings.

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