Makhan Lal Roy and another Vs Babada Kanta Roy

Rev. No. 1211 of 1906

Court: Calcutta High Court

Date of Decision: Dec. 6, 1906

Judgement

1. After hearing both parties in this rule we are of opinion that the rule must be made absolute and the order under sec. 145 set aside. The property

in dispute seems to be two huts constructed in a compound common to both parties. The two parties are brothers and it is suggested that they are

in exclusive possession of certain portions of the masonry homestead. The dispute, however, is about two mat huts which have been constructed

outside the masonry building on what seems to be the common homestead ground, and the question is, whether a dispute of this sort is one which a

Magistrate has jurisdiction to entertain under sec. 145, Cr. P. C. In our opinion it is not. The land on which the huts stand being in joint possession

of the two disputants, and there having been no real partition of the homestead land though there has been apparently an attempt to partition it by

arbitration, it cannot be said that the dispute is by two opposing parties having adverse rights to exclusive possession of the land. The dispute is

between two parties having joint rights to the land in dispute, each of which is claiming exclusive possession. This is not, in our opinion, a matter

which could be determined under sec. 145.

2. We therefore set aside the order passed under sec. 145, Cr. P. C, and direct that if the Magistrate should think that any steps are necessary in

order to prevent a breach of the peace, he should proceed against both parties under sec. 107, Cr. P. C. The rule is made absolute and the order

passed under sec. 145, Cr. P. C, is set aside.