

(1919) 04 CAL CK 0002**Calcutta High Court****Case No:** Rev. No. 236 of 1919

Kinu Mondal and Another

APPELLANT

Vs

Haji Baul Mondal and Others

RESPONDENT

Date of Decision: April 23, 1919**Judgement**

Walmsley J.

1. In this case, I think the rule should be made absolute. The facts have been set out in, the Magistrate's judgment. The difficulty that presents itself to my mind is the obscurity of the findings. The Magistrate says in outplace that looking at the evidence one cannot be certain whether the lands in dispute are joint, or separate. Then, he says "It appears that the deceased Ain's sons," that is, the Petitioners, "continued joint with their uncle Baul and presumably they are still joint." Again, "the documents produced by the second party show that the properties, whether they be joint or not, are in the constructive and de facto possession of the second party" I find it very difficult to understand what these contradictory remarks mean. But, on the whole, it appears to me that the view taken by the learned Magistrate was that the uncle, that is, the Opposite Party No, I, was in possession on behalf of his nephews and himself. That being so, I think the principle laid down in the case of Tarujan Bibi v. Asamuddi Bepari 4 C.W.N 426 (1900) is applicable in the present case; and for that reason I think the present Rule should be made absolute and the order passed by the Magistrate under sec. 145 of the Code of Criminal Procedure should be discharged.

Shamsul Huda, J.

I agree.