(1916) 03 CAL CK 0003

Calcutta High Court

Case No: None

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| Atul Hazra and Others | | APPELLANT |
| | Vs | |
| Uma Charan Changdar and Others | | RESPONDENT |

Date of Decision: March 10, 1916

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 107

Citation: 33 Ind. Cas. 822

Hon'ble Judges: Walmsley, J; Chitty, J

Bench: Division Bench

Judgement

1. In this case, the five petitioners, who are the second party to the proceedings, obtained a decree against Bhusan Changdar one of the first party) and Nando Changdar, who are entitled to an undivided one-fourth share in a property. This one fourth share was brought to sale in execution and was purchased by the decree-holders. They obtained delivery of possession through the Court. The present proceedings were taken between the first party, of whom Bhusan Changdar, one of the judgment-debtors, was one, and the second party who were the decree-holders. The learned Magistrate has found that, though the second party are undoubtedly entitled by virtue of their purchase to an undivided one-fourth share, they were never in actual possession of the property and that the crop was grown entirely by the first party. He has accordingly declared in favour of the possession of the first party and directed the second party to go to the Civil Court.

2. We do not think that the order in this particular case can stand. It seems contrary to all principles of justice that a judgment-debtor should be allowed to retain possession against his decree-holder who has actually been given possession against him by a Civil Court, and, in a criminal proceeding, to assert that possession and, by force of the order of the Magistrate, drive the decree-holder and auction-purchaser back to the Civil Court for a further declaration of his right. This

element in the case before us distinguishes it from the case of Basanta Kumari Dasi v. Mohesh Chandra Laha 19 Ind. Cas 541 : 40 C. 982 : 14 Cri L.J. 269 : 17 C.W.N. 944. With the principles laid down in that case we are fully in accord. We think that the present order cannot be allowed to stand and must be set aside and we order accordingly.

3. If there is still any likelihood of a breach of the peace, the Magistrate will have power to take steps u/s 107, Criminal Procedure Code, to bind down the aggressive parties.