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## Atul Hazra and Others Vs Uma Charan Changdar and Others

## None

Court: Calcutta High Court

Date of Decision: March 10, 1916

**Acts Referred:** 

Criminal Procedure Code, 1898 (CrPC) â€" 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.