

(1899) 06 CAL CK 0007

Calcutta High Court

Case No: Rev. No. 299 of 1899

Kesu Alias Keshwar
Singh

APPELLANT

Vs

Moti Mollah

RESPONDENT

Date of Decision: June 5, 1899

Judgement

1. The order instituting proceedings under sec. 145, C. P. C., does not state that the Magistrate satisfied himself that a dispute likely to cause a breach of the peace existed concerning any land. It merely refers to a petition made by a private person complaining of the commission of various offences none of which necessarily involves a breach of the peace. The Magistrate seems to think that because that person at the same time complained of being dispossessed of his land, that was a reason why he should deal with the case under sec. 145 rather than try the complaint of the offences charged, and if it so happened that the complainant established his case so as to obtain the conviction of the accused of an offence attended by criminal force, he could order under sec. 522 the restoration of the land to the complainant. The course which the Magistrate refuses to adopt was no doubt the proper course for him to have taken and there is nothing in the evidence before us which in any way justified the institution of the proceedings under sec. 145. The proceedings, therefore, were without jurisdiction and must be set aside and the Rule made absolute.