

(1879) 04 CAL CK 0004

Calcutta High Court

Case No: None

In Re: Durjan Mahton
and Others

APPELLANT

Vs

RESPONDENT

Date of Decision: April 23, 1879

Citation: (1880) ILR (Cal) 135

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

Who after stating the facts continued: The proceedings of the Deputy Magistrate have, no doubt, been very irregular, but it appears to us that the result arrived at is that which he must have arrived at if he had acted according to the law.

2. The dispute in this case arose, in respect of certain property which admittedly was in the possession of the ryots up to a certain date; and which was claimed by Wajid Hossein and others as having been transferred to them by the execution of a decree for ejectment under the Rent Law on the 18th of November 1878. Both the parties refer to the same decree, one as showing his right to both crop and land, and the other as showing that the zemindar were entitled to the land only, and not to the crop. When, therefore, it became necessary for the Deputy Magistrate to consider what steps he should take to prevent any breach of the peace, it clearly was necessary for him to come to some determination as to the effect of the Munsif's decree, which both parties put forward as conclusively establishing their respective rights. If he was of opinion that the evidence before him showed that a breach of the peace was likely to occur, he would have to give effect to his decision in regard to the effect of the execution under the decree, by binding over the party whom he considered to be wrongfully putting forward a claim to the property, in recognizances not to commit a breach of the peace. The practical effect of the recognizance would, no doubt, have been, to give the crop to one or other of the

contending parties.

3. Instead of making the order in this form, he unfortunately allowed the police to interfere with the cutting and carrying away of the crop, and having got it into his own custody it became necessary for him to get rid of it.

4. The order to cut the crop, and subsequently to make it over to one of the parties, was not an order warranted by the Code of Criminal Procedure, but the effect of it was the same as if he had bound down the ryots u/s 491, or restrained them from interfering with the crop u/s 518.

5. The Judge is of opinion that in this case the Deputy Magistrate has encroached upon the functions of the Civil Courts, and that he has, instead of allowing the Civil Court to execute its own decree, proceeded to execute it after consulting with the police. This in our opinion is not quite a correct statement of what occurred. However irregular the proceedings of the Deputy Magistrate may have been in form, it clearly was necessary for him to come to a decision as to the effect of the decree of the Civil Court. The steps he took for arriving at that decision were, however, improper. If he had any doubt as to the intention of the Court executing the decree, the proper course for him was to consult the Court itself, and not to make enquiries as to the effect of the execution of the decree from the police. But although his mode of arriving at that conclusion was not correct, it appears to us that the conclusion arrived at, so far as we are able to come to any determination on the point in the exercise of criminal jurisdiction, was correct. We are not aware that the question as to the effect of an ejectment order u/s 53 of the Rent Law has yet been considered on the civil side of the Court. But looking at the provisions of the Act itself it seems to us that the conclusion arrived, at by the Deputy Magistrate, that the effect of an ejectment under the Rent Law is, to dispossess the ryot, not only of the land, but also of the crop standing thereon, was a reasonable one. The object of that ejectment is to completely terminate the connection between the parties as landlord and tenant. The ejectment is in itself by way of penalty for nonpayment of the rent of previous years, and the provisions of Section 54 of the Rent Law are extremely stringent.

6. That section does not allow the Court executing the decree to entertain any application for stay of execution, and it does not allow any person evicted under an ejectment order to be restored to possession at all unless the decree shall be reversed.

7. We are, therefore, of opinion, that the conclusion at which the Deputy Magistrate arrived, as to the effect of the ejectment order, was a correct one; and that he would have been perfectly justified, in taking steps, under the provisions of the Criminal Procedure Code, for protecting the decree-holders from violence, when they proceeded to enforce their claim to the crop standing on the land from which the ryots had been ejected.

8. With reference to the explanation of the Deputy Magistrate, dated the 3rd of April 1879, in which he says that he is not aware that there is any particular section of the law applicable to his action, we would observe that if the law did not allow him to act in the way in which he did, his action clearly was illegal. He was bound to follow the provisions of the law, which properly applied are sufficient for providing against a breach of the peace. In support of his view, that in the absence of any special law he was justified in acting on his own discretion, Mr. Hampton says, that "there is no section of the law authorizing return of stolen property recovered, to the man robbed, yet it is in reason that the property should be so returned." Mr. Hampton has apparently overlooked the provisions of Section 418 of the Code. That section clearly provides for the case which he supposes to be left not provided for.