

(1922) 11 CAL CK 0012**Calcutta High Court****Case No:** None

Syed Sadek Reza

APPELLANT

Vs

Sachindra Nath Roy and Others

RESPONDENT

Date of Decision: Nov. 21, 1922**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 145, 350

Citation: AIR 1923 Cal 483(1) : 73 Ind. Cas. 265**Hon'ble Judges:** Suhrawardy, J; Newbould, J**Bench:** Division Bench**Judgement**

Newbould, J.

This Rule is directed against an order passed u/s 145, Criminal Procedure Code, declaring the first party to be in possession of certain land. The petitioner in this case is a member of the second party. It is strongly contested on his behalf that the Magistrate had no jurisdiction to go behind the orders passed in his favour both under the Survey Act and under the Bengal Tenancy Act. We are unable to hold that in deciding as he has done the Magistrate acted either without jurisdiction or with such irregularity as would justify our setting aside his order in the exercise of our powers under the Government of India Act.

2. The main contention is that these orders in the petitioner's favour were binding on the Magistrate and he was bound to hold that after the decision in the proceeding under the Survey Act the second party were in possession. It is said that there was no finding that there has been any change of relationship at that time. But the finding that the first party are now in possession is in itself a finding of change of relationship since the decision under the Survey Act. As regards the entry in the Record of Rights on which great reliance is placed¹ it appears that this entry was based entirely on the Survey proceedings. The Magistrate's order cannot be said to have been made without jurisdiction because he has not expressly stated that the presumption arising from this entry has been rebutted. His finding is in fact

a finding that the presumption has been rebutted. It is not for us to say whether the Magistrate's decision on the evidence before him was right or wrong. There can be no doubt that such evidence as there was before him was fully considered and he has come to a definite finding and he had jurisdiction to come to that finding.

3. One other point was taken with regard to the Magistrate's jurisdiction and this is based on Section 350 of the Code of Criminal Procedure. The Magistrate who passed the order did not himself record the whole of the evidence. He based his decision partly on the evidence recorded by another Magistrate before whom the proceedings were commenced. We hold that, though the main portion of Section 350 is sufficient to give the Second Magistrate jurisdiction to proceed with the case, the proviso to that Section did not compel him to start the enquiry *de novo* when an application to that effect was made on behalf of the second party. The wording of the principal Clause of Section 350 is very different from that in proviso (a). In the main body reference is made to an enquiry or trial: proviso (a) is limited to trial and also makes reference to an accused, a word which does not appear in the preceding part of the section. We have no doubt that the intention of the legislature was to limit the application of proviso (a) to criminal trials and not to extend that proviso to enquiries which are also covered by the first portion of the section.

4. I hold, therefore, that the contentions raised on behalf of the petitioner fail and I accordingly discharge this Rule.

Suhrawardy, J.

5. I agree. I desire to rest my judgment on the observation made by the Trying Magistrate in his explanation submitted to this Court which finds some support from his judgment, viz., "that according to the map prepared by, the Pleader Commissioner the Revenue Survey line which is shown in full red passes by the west of the eastern boundary line of the disputed land; so the claim by the second party in the disputed land on the decision of the case u/s 41 of the Survey and Settlement Act has not been established." Were it otherwise, I would have, in, the circumstances of this case, had considerable hesitation in upholding the Magistrate's order u/s 145, Criminal Procedure Code.