(1921) 05 CAL CK 0031

Calcutta High Court

Case No: None

Shahabaj Mandal	APPELLANT
Vs	
Bhajahari Nath	RESPONDENT

Date of Decision: May 4, 1921

Acts Referred:

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

Citation: AIR 1922 Cal 364 : 75 Ind. Cas. 75

Hon'ble Judges: Teunon, J; Suhrawardy, J

Bench: Division Bench

Judgement

1. This Rule arises out of certain proceedings instituted under the provisions of Section 145, Criminal Procedure Code. These proceedings refer to a tank known as Mirsagar and to a dwelling house which, we are informed, is now more or less dilapidated. It appears that in execution of a decree obtained against the predecessor of the petitioners before us, who were the, first party to the proceedings u/s 145, these properties and other properties were sold, and were purchased by the members of the second party who are the opposite parties in this Rule. It has then been found by the Trial Magistrate that on the 17th November 1918 the auction-purchasers obtained possession of the tank through the Civil Court. That possession was taken in the lifetime of the judgment-debtor, who is said to have died some five days after the delivery of possession.

2. It has next been found that the auction-purchaser took possession of the residential house on the 16th May 1920. In the execution proceedings terminating in the delivery of possession of the house the petitioners Nos. 1 and 2, the son and widow of the original judgment-debtor, were impleaded as parties. The Section 145 proceedings were instituted on the 22nd January 1921. The Magistrate''s finding on the evidence is that, notwithstanding the delivery of possession taken on the occasions which we have set ont, the members of the first party have continued all along to be in possession and, therefore, we e in actual possession on the day on

which the Section 145 proceedings were instituted.

3. Relying, however, on the decision of this Court in Atul Hazra v. Uma Charan Changdar 33 Ind. Cas. 822 : 20 C.W.N. 796 : 17 Cri. L.J. 182 : 23 C.L.J. 555 the learned Trying Magistrate has made his final order in favour of the second party, and the question before us is whether that order, on the facts and circumstances of the present case, can be supported. As we have already pointed out, the heirs and representatives of the original judgment-debtor have been in possession from the date of his death sometime soon after the 17th November 1918. Their possession from that date onwards to the 22nd January 1921, in our opinion, should have been regarded as adverse to the auction-purchaser. In that view it follows that, in so far as the tank is concerned, the order made in favour of the second party cannot be supported.

4. Then, with regard to the house the case of the auction-purchasers was not that they merely took formal possession, but that they took actual possession. The house, it is said, was found vacant, and the officer of the Court who delivered possession actually inducted the representatives of the auction-purchaser into the house. The finding of the Magistrate is that, on the date when the proceedings u/s 145 were instituted and for more than two months preceding that date, the members of the first party have been and are in possession It follows, therefore, that between the delivery of possession on the 16th May 1920 and the institution of the proceedings on the 22nd January 1921 there must have been dispossession of the auction-purchasers giving rise in their favour to what may be called a fresh cause of action. In that view of the matter, it is clear that the Magistrate''s order as regards the house is also not to be supported. In support of the view that we take we may refer to the cases of Hazari Khan Nafar Chandra Pal Chowdry 40 Ind. Cas. 718 : 23 C.W.N. 479 : 18 Cri. L.J. 718 and Kulada Kinkar Roy v Danesh Mir 33 C. 33 : 10 C.W.N. 257 : 2 C.L.J. 271 : 2 Cri. L.J. 670 .

5. In the result, this Rule is made absolute, and the Magistrate''s order made in favour of the second party with regard to both the house and tank is set aside.