

(1962) 05 CAL CK 0012

Calcutta High Court

Case No: Criminal Revision No. 519 of 1961

Adhir Chandra Bera

APPELLANT

Vs

Vidyadhar Ari and Others

RESPONDENT

Date of Decision: May 11, 1962

Acts Referred:

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

Citation: 66 CWN 947

Hon'ble Judges: Sen, J; Amarendra Roy, J

Bench: Division Bench

Advocate: Harendra Nath Haldar, for the Appellant; Chittaranjan Das, for the Respondent

Judgement

Sen, J.

This re-visional application is directed against an order of Shri S. Banerjee, Magistrate, First Class, Diamond Harbour, directing the caretaker receiver to deliver the remaining 40 per cent. of the produce of the case land to the second party, who are the opposite party before us. In the proceedings u/s 145 of the Criminal Procedure Code started at the instance of the petitioner first party Adhir Chandra Bera was not entitled to any share of the produce. Because of the dispute, the land was attached and placed in charge of a receiver caretaker, who was directed to have the paddy harvested and threshed under his supervision. 60 per cent. of the produce was ordered to be delivered to the opposite party who are the admitted Bargadars of the land. As regards the question whether or not the petitioner Adhir Chandra Bera was entitled to the remaining 40 per cent., the learned Magistrate observed that a compromise petition had been produced before him, which had been filed in a Bhagchias Court, showing that on behalf of the Jotedar Khagendra Nath Maity, one Surendra Nath Mondal had appeared before the Bhagchias Officer. The learned Magistrate observed that the petitioner had not been able to prove how the title had devolved on him. Adhir Chandra Bera, the petitioner, claimed that the real owner was Sudhir Chandra Roy and that he was an agent of Sudhir Chandra

Roy, and that Khagendra Nath Maity was a benamdar for Sudhir Chandra Roy; but there being no evidence before the learned Magistrate as to who was the real owner, the learned Magistrate directed that the remaining 40 per cent. of the produce be also handed over to the second party Bhagchasis.

2. It has been urged before us by Mr. Harendra Nath Haldar with some force that if the remaining 40 per cent. of the produce is given to the Bargadars, it will be difficult for whoever is found to be the real owner to realise the same from them; and that the appropriate order would have been to direct the caretaker receiver to sell the remaining 40 per cent. of the produce of the case land under the direction of the learned Magistrate and deposit the sale proceeds in the Magistrate's Court, so that the real owner after establishing his claim to the sale proceeds can withdraw it from the court. After hearing the learned Advocates for both sides we agree that that would be the proper order. Accordingly, we set aside the order of the learned Magistrate and we direct instead that the receiver caretaker should sell the remaining 40 per cent of the produce of the case land in his hand at fair market price and deposit the sale proceeds in the court of the learned Magistrate, and the learned Magistrate will hold the same until the real owner whether Sudhir Chandra Roy or Khagendra Nath Maity establishes his title in the Civil Court or before the Bhagchas Officer and claims the money. We understand that a civil suit is already pending for deciding the question of title. The rule is disposed of accordingly. We may observe that section 145 of the Criminal Procedure Code ought not to have been invoked in such a case. Disputes between persons who claim to be the Jotedars and the persons who claim to be the bargadars, really have to be filed before the appropriate Bhagchas Officer who has the jurisdiction under the Land Reforms Act to decide such questions. The cases do not really involve a dispute over the possession of land because the Bhagchasis in view of their existing legal rights are in admitted possession of the land.

Amaresh Roy, J.

I agree.