Bhabanath Chakravarti and Others Vs Peary Sarma and Others

None

Court: Calcutta High Court

Date of Decision: Jan. 18, 1910

Acts Referred:
Criminal Procedure Code, 1898 (CrPC) â€" Section 145, 145(2)

Citation: 6 Ind. Cas. 544

Hon'ble Judges: Stephen, J; Carnduff, J

Bench: Division Bench

Judgement

1. This is a rule to show cause why an order u/s 145, Criminal Procedure Code, made in favour of the first party, should not be set aside on the

grounds that the parties to the dispute are co-sharers and that the order is inoperative owing to a previous decision of a Civil Court. The property

in dispute is a four annas share of a jalkar, which consists of 24 khals. From the findings in the order and the undisputed facts it seems that a body

of men known as the Mejozilla, or the syndicate company is entitled to a four annas share in the jalkar, and that the petitioner is entitled under

them, or under them and other persons who may be found to be entitled on an appeal now pending. The first party say that they are in possession

of the whole jalkar and set up a claim to be entitled to the whole of the four annas. They failed to make out this claim in recent litigation. They have

appealed as to an one anna four pice share, but it is found that, they surrendered a two annas eight pice shaiebya solenama. The result is that the.

acts of possession, proved by the first party in this case, i.e., the fishing in the jalkar, can be relied on only as showing joint possession. The second

party claims only to be in possession of four annas of the property. The parties, therefore, must be held to have joint rights in the fishery and neither

of them can be considered as claiming exclusive possession. As far as the possession of the fishery is concerned, therefore, the section is

inapplicable for the double reason that the parties have joint rights, [see Mohan Lal Roy v. Barada Kanta Roy 11 C.W>N> 512, and are not

seeking actual possession which has always been held to be confined to exclusive possession.

2. This disposes of the case as far as the four annas of the fishery is concerned. It is possible that on the facts the Magistrate might have jurisdiction

to, deal with the case on the ground that what was in dispute was not a share in the fishery, but a, share in its profits dispute as to which might, of

course, have been dealt with u/s 145 by force of Sub-section (2). But this is not the case dealt with by the Magistrate. The proceedings refer to a

four annas share of the fishery, and the Magistrate has not adjudicated on possession of the profits, which are, it would seem, either the fish caught

or their price when sold, nor are there any finding"s as to the facts that would be relevant to an enquiry as to possession of profits. It may be that a

co-owner fishing1 in a jalkar holds a part of the profits he derives from his fishing on behalf of his co-owner and from the necessity of the case is

his agent to do so. This would take the case out of the principle laid down in Nritta Gopal Singh v. Chandi Charan Singh 10 C.W.N. 1088 : 4 Cr.

L.J. 215 and Akalow Chandra Das v. Mahesh Lal 36 C. 980 : 4 Ind. Cas. 696; but it is not certain that it would bring it within the principle of Sri

Mohan Thakur v. Nursing Mohan Thakur 27 C. 259 : 4 C.W.N. 420 (note.). This, however, is not a question we can decide on the present

occasion, and we must hold that as the possession set up by both parties is a joint possession, the Magistrate had no jurisdiction to deal with the

case and the rule must be made absolute. It is not necessary for us under these circumstances to consider the second ground mentioned in the

Rule. Rule made absolute.