(1920) 12 CAL CK 0018

Calcutta High Court

Case No: None

Abdul Hamid and Others		APPELLANT
	Vs	
Yasin Munshi and Others		RESPONDENT

Date of Decision: Dec. 1, 1920

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 107, 145

Citation: 61 Ind. Cas. 513

Hon'ble Judges: Ghose, J; Beachcroft, J

Bench: Division Bench

Judgement

Beachcroft, J.

This Rule was issued at the instance of the first party. It calls upon the Magistrate and the second party to show cause why an opportunity should not be given to the first party to cross examine the witnesses of the second party who were examined before 15th May 1920, and also why, in the order made, the boundaries of the lands found to be in the possession of the second party should not be specified.

2. With regard to the first point it appears that on 15th May five witneses who had been examined on behalf of the second party were to be cross--examined The Senior Pleader who appeared on behalf of the first party applied to the Magistrate to allow him to postpone his cross--examination till a later date as he was engaged elsewhere. The Magistrate does not appear to have fully appreciated the application. However, whether the mistake was that of the Magistrate or whether it was that of the Pleader, the Pleader was under the impression that his application had been granted and he went away. The result was, that these five witnesses were not cross-examined. The Magistrate being under a misapprehension as to what had happened proceeded to dispose of the case in favour of the second party. It may be that the Senior Pleader did not make his application sufficiently intelligible to the Magistrate Possibly, this would not in itself be a sufficient ground for interfering with the Magistrate''s order, but as we think the Rule ought to be made absolute on

the second ground, we think the ends of justice will be met if, at the same time, we direst the Magistrate to allow the five witnesses who were examined on behalf of the second part-, before 15th May to be cross-examined before the final order is made.

3. Now, to come to the second point. That is in effect that there has not been a sufficient specification of the lands in dispute in the Magistrate''s order, In the proceedings no doubt the lands are sufficiently specified by reference to certain numbers of the Settlement Record; but it appears that the Magistrate has not made his final order with regard to those two numbers but bas limited it to a portion of the lands fevered by those two numbers, and his language does not make it clear to what portion of the lands his order is limited. What he says is: "I declare that the particular lands only in dispute are in possession of and cultivated by the second party and they will remain in possession till evicted therefrom in due course of law." This obviously is indefinite, while it is necessary that it should be clear exactly what land is covered by the Magistrate''s order. It is objected on behalf of the first party that if they are driven to bring a oivil suit in future to establish their right it will be impossible for them to define in their plaint the lard in respect of which they due. That seems to me to be a very cogent objection. The Magistrate has given an explanation in which he says that the areas in tie possession of the second party are defined in the hukumnamas which have been filed en their behalf. The District Magistrate in forwarding the ex--planation of the trying Magistrate, rightly, in my opinion, observes that he does not consider the definition in the hukumnamas Sufficient for the purpose of the proceedings, and obviously it would not be sufficient because if any interpretation of the order is required in future that interpretation ought not to require a reference to matters which have been given in evidence in these proceedings. On behalf of the opposite party it has been contended that it has been held in this Court that if the parties know what is the subject--matter of the dispute this Court ought not to interfere, and we were referred to the oases of Gordon Sims v. Johurry Lal 5 C.W.N. 56, and Hurendro Narain Singh Chowdhury v. Bhobani Prea Baruani 11 C. 762 : 5 Ind. Dec. (N.S.) 1267. But in both of those cases, although the land was not defined by boundaries, the parties knew exactly what the dispute was about and the final order was in respect of the whole of the subject--matter. Here, as I have pointed out, the final order purports to be in respect of only a portion of the subject--matter. In the case of Mohesh Sowar v. Narain Bag 27 C. 981 : 14 Ind. Dec. (N.S.) 642, Prinsep, J,, observed: "It is absolutely necessary, as has been held by this Court, that the written order should be correct and complete in its terms." The learned Judge was there referring to the initial proceedings in the case, But if there is a variation between the initial proceeding and the final order, it is just as necessary that the final order should be complete in its terms. It may be that, in the circumstances of this case, it will be somewhat difficult for the Magistrate to define by boundaries, the exact area which he finds is in the possession of the second party because it appears that the land is

on the bank of a bil and the culturable land varies in the very nature of things from time to time. That might be a reason for the Magistrate to hold that proceedings u/s 145 are not appropriate proceedings in the case of the particular dispute, and that recourse to Section 107, Criminal Procedure Code would be more appropriate. He that as it may, as the order is it is incomplete. We, therefore, set aside the order of the Magistrate and direct him to draw up a proper order specifying exactly what is the land which he finds to be in the possession of the second party and which he intends to be covered by his order, if he still finds that party to be in possession. As we have already remarked, as is is necessary for him to re-open the proceedings, he will give the first party an opportunity of cross examining the five witnesses of the second party who were examined before 15th May and then make his final order.

Ghose, J.

4. I agree.