

(1910) 12 CAL CK 0028

Calcutta High Court

Case No: None

Sadhu Biswas and Another

APPELLANT

Vs

Mahamad Ali Biswas

RESPONDENT

Date of Decision: Dec. 9, 1910

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 145(6)

Citation: 9 Ind. Cas. 167

Hon'ble Judges: Sharf-ud-Din, J; Holmwood, J

Bench: Division Bench

Judgement

1. This is a Rule calling upon the District Magistrate and on the opposite party to show cause why the order u/s 145, dated the 23rd July 1910, should not be set aside as made without jurisdiction inasmuch as the previous order dated the 31st May 1909 was still in force and no proceedings had been taken in the Civil Court since.

2. Now, the previous order of the 31st May 1909 is as follows: "The parties compromised and filed a petition of compromise. According to its terms the lands will be in the possession of both sides as stated in the petition." Now, this order, as we read it, cannot be an order under Clause 6 of Section 145, Criminal Procedure Code. That section is mandatory and it says: If the Magistrate decides that one of the parties was in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction." This order appears to us to be merely a recital of what the parties told him and, therefore, falls under Clause 5. Both the parties interested came to Court and showed that no such dispute as aforesaid existed inasmuch as they had compromised. The very fact that they had compromised, precluded the Magistrate from passing an order, under Clause 6. He was bound to stay all further proceedings and he should have recorded an order of cancellation. The fact that the parties have compromised and that there was no longer any dispute likely to lead to a breach of

peace ousted the jurisdiction of the Magistrate. We are, therefore, of opinion that no order under Clause 6 of Section 145 was in existence at the time of these proceedings.

3. It is clear, however, from the facts that the parties began to fight directly, the gentleman who went out to give them possession, had gone away and that they have continued to threaten to fight ever since, that these proceedings were eminently necessary. They were also, in our opinion, made with full jurisdiction.

4. The Rule is, therefore, discharged.