

Land Registration Office accordingly, the name of the defendant being expunged and his illegal possession removed, and that the cause be remitted to the High Court for the ascertainment of mesne profits for the period of dispossession up to the date of delivery of possession and for a decree therefor against the respondent. The respondent will pay the costs both here and in the Courts below.

1912
 BHAWANI
 KUWAR
 v.
 MATHURA
 PRASAD
 SINGH.

Appeal allowed.

Solicitors for the appellant: *T. L. Wilson & Co.*

Solicitors for the respondent: *Watkins & Hunter.*

J. V. W.

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Inam.

SHEOBALAK RAI

v.

BHAGWAT PANDEY.*

1912
 June 7.

*Attachment—Criminal Procedure Code (Act V of 1898), ss. 146 and 148—
 Refusal to grant time—Duties of the Magistrate—Practice.*

It is only when the magistrate decides that none of the parties was in possession or is unable to satisfy himself as to which of them is in possession that he can attach property under Sec. 146 of the Criminal Procedure Code. He cannot say that he is unable to satisfy himself if he has never made the slightest effort to do so.

Mansar Ali v. Matiullah (1) followed.

Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty (2) distinguished.

ON the 4th of January 1912, proceedings under s. 145 of the Criminal Procedure Code, were drawn up by

Criminal Revision No. 560 of 1912, against the order of U. Sen Gupta, Deputy Magistrate of Shahabad, dated March 6, 1912.

(1) (1908) 12 C. W. N. 896.

(2) (1909) 14 C. W. N. 80.

1912
 SHROBALAK
 RAI
 v.
 BHAGWAT
 PANDEY.

the Magistrate in charge (district Arrah) against the petitioners, and the 2nd party in respect of a certain plot of land.

The case was fixed for the 16th of January but as neither the petitioners, Sheobalak Rai and others, nor the 2nd party filed their written statement, the magistrate, pending final decision, attached the land in dispute, and adjourned the case to the 30th of January.

On the 30th of January, the 2nd party filed their written statement and took exception to the proceedings on the ground that the land in dispute did not lie within the jurisdiction of the trying Magistrate.

Thereupon, the Magistrate directed the police to report whether it was so and fixed the case for the 10th of February. On the 10th of February, the case was again adjourned till the 21st. On the 21st, upon application of the parties for time to produce documents, the Magistrate adjourned the case till the 6th of March.

On the 6th of March, application for further time was made but the Magistrate refused the application, attached the land in dispute and directed the police to gather the crops standing on it.

Against that order of the Magistrate, the 1st party moved the High Court and obtained this Rule.

Babu Chandrasekhar Prosad Singh and *Jyotish Chandra Bose*, for the petitioners.

The Deputy-Legal Remembrancer (Mr. Orr), for the Crown.

HOLMWOOD AND IMAM JJ. This was a Rule calling on the District Magistrate of Shahabad to show cause why the order under section 146 of the Criminal Procedure Code should not be set aside as wholly without jurisdiction, inasmuch as the Magistrate had not taken

any evidence as was necessary in order to enable him to determine, if possible, who was in possession.

Now, as regards the duties of the Magistrate under section 146, it was laid down in the case of *Mansar Ali v. Matiullah* (1) that the Magistrate in the absence of information might have himself held a local enquiry under section 148 or in various ways might have informed himself as to the facts of the case; as he had not done so it was held that he declined jurisdiction and the order complained of was set aside. This ruling has been followed by this Court in the experience of one of us who has been sitting upon this Bench for the greater part of two years, and has never as far as we know been differed from. There is a ruling in the case of *Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty* (2) in which the learned Judges profess to distinguish the ruling in *Mansar Ali v. Matiullah* (1), on the ground that the Judges set aside the order in that case because the Magistrate did not give sufficient time for regular proceedings to be followed. But as we have just pointed out that was only one ground and a minor ground for setting aside the order. The main ground was the ground we have just now cited and that ground appears to us to be an obviously good ground; for the law says that it is only if the Magistrate decides that none of the parties was then in such possession or is unable to satisfy himself as to which of them was in such possession, he can attach the property, and it is perfectly clear that he cannot say he is unable to satisfy himself if he has never made the slightest effort to do so. He had only to send a Kanungoe out to the spot and take his report, or send for the headman of the village and ask him what the facts were; he would have then fully armed himself with

1912

SHEOBALAK

RAI

BHAGWAT
PANDEY.

(1) (1908) 12 C. W. N. 896.

(2) (1909) 14 C. W. N. 80

1912
 SHEGBALAK
 RAI
 v.
 BHAGWAT
 PANDEY.

jurisdiction, but he did nothing of the kind, and the case can be clearly distinguished from *Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty* (1), where the Magistrate said he was unable to satisfy himself. He does not even say that he has had the slightest difficulty. His order is as follows: "No evidence produced by either side, lands attached under section 146." Whatever view, therefore, be taken of the rulings, that order is clearly incompetent and without jurisdiction.

The order must be set aside and the lands released from attachment.

S. K. B.

Rule absolute.

(1) (1909) 14 C. W. N. 80.

APPELLATE CIVIL.

Before Mr. Justice Stephen and Mr. Justice Richardson.

1912
 June 11.

CHANDRA MADHAB BARUA

v.

NOBIN CHANDRA BARUA.*

Account, suit for—Principal and Agent—Proprietor appointed by the co-proprietors as Common Manager for payment of joint debts, whether an agent of the latter and of the heirs of a deceased proprietor—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 89—Plea of limitation under the Act taken on remand after previous unsuccessful plea of limitation under Act VIII of 1869, s. 30.

A proprietor appointed by the other co-proprietors of an estate as common manager thereof, for the purpose of realizing its profits and appropriating them to the payment of their joint debt, is an agent of the other

* Appeal from original decree, No. 326 of 1910, against the decree of F. Emerson, Subordinate Judge of Dhubri, dated May 21, 1910.