

CRIMINAL REVISION.

Before Walmsley and Suhrawardy JJ.

NAYAN MANJURI DASI

v.

FAZLEY HUQ SARDAR.*

1922

Jan. 26.

Market Stalls—Dispute relating to market stalls—Possession—Occasional, not continuing, possession—Occupation of stalls only on one day in the week—Criminal Procedure Code (Act V of 1898), s. 145.

The “possession” contemplated by s. 145 of the Criminal Procedure Code is, in cases where interruption is not due to seasonal variations, absolute continuing, and not an occasional, possession.

Where it was found that certain stall holders in a *hât* were in actual occupation of the stalls only on one day in the week, that at the close of the day they used to remove their goods, and that the gates of the *hât* were then kept closed, on the remaining days, by the proprietor’s servants :—

Held, that s. 145 of the Code was not applicable.

Manik Chandra Chakravarti v. Preo Nath Kuar (1) relied on.

The petitioner was the proprietor of a *hât* at Howrah, consisting of 29 sheds divided into stalls, standing on a plot of ground enclosed by a wall with four gates. The gates were kept open only on Tuesdays when the *hât* was held. At the close of the *hât* the stall-holders used to remove their goods leaving the stalls empty, and the gates were then kept locked up by the petitioner’s servants till the following Tuesday.

The petitioner alleged that all the sheds in the *hât* were erected by the previous proprietor, her father, that the stalls were settled with shop-keepers, by her

* Criminal Revision No. 1187 of 1920, against the order of F. C. Chatterjee, Subdivisional Officer, Howrah, dated Oct. 15, 1920.

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manager, for six months at a time, on the payment of *salami* and *dan* or daily toll, and that the present opposite party had taken four stalls on such terms, but had recently refused to pay the amount demanded by the manager. The opposite party, on the other hand, claimed to have taken a lease of a plot of land in the *hât* from the petitioner's father, to have erected four sheds thereon, and to have been in possession of them for many years.

On the 10th August 1920 the Subdivisional Magistrate of Howrah drew up a proceeding, under s. 145 of the Criminal Procedure Code, in respect of the four disputed sheds, making the present opposite party, the first party and the petitioner the second party. In his final order, dated 15th October, the Magistrate found that the first party had not proved their alleged lease and construction of the sheds, but that they were in actual possession of four stalls in two of the disputed sheds, and that the second party was in actual possession of the remaining stalls therein. He, accordingly, declared each party entitled to retain possession of their stalls, respectively. The second party thereupon obtained the present rule on grounds (1) and (4) of her petition, viz., "that, having regard to the nature of the alleged dispute, the case does not come within the purview of s. 145", and that, "having regard to the findings arrived at, the order with respect to the four stalls is without jurisdiction."

Babu Manmutha Nath Mukerjee (with him *Babu Dwijendra Nath Mookerjee*), for the petitioner. As the possession found in this case was not a continuous one, s. 145 does not apply: see *Manik Chandra Chakravarti v. Preo Nath Kuar* (1).

Babu Dasarathi Sanyal (with him *Babu Harendra Kumar Sarbadhary*), for the opposite party. The dispute in this case relates to land: the opposite party being in possession of the stalls. Refers to *Hurbulubh Narain Singh v. Luchmeswar Prosad Singh* (1). Distinguishes *Manik Chandra Chakravarti v. Preo Nath Kuar* (2). The extraordinary jurisdiction under s. 107 of the Government of India Act should not be exercised when substantial justice has been done.

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WALMSLEY J. The opposite party have been found to be the occupants of four stalls in a *hât* which is held at Howrah on one day a week. The petitioner is the proprietor of the *hât*. The *hât* is held on a place surrounded by walls, and the gates on those walls are shut at night, and the evidence is that the stall-holders on removing their goods leave the *hât* entirely empty, when it remains in the charge of the *dûrwans* of the second party, the petitioner before us. The opposite party claim the right to continue to be in occupation of the four particular stalls in the *hât*. The proprietor, on the other hand, claims the right to let out those stalls to other stall-holders if she gets better terms or if the opposite party refuse to pay what she asks. These are the circumstances under which the matter reached the point at which the Magistrate thought proceedings under section 145 of the Criminal Procedure Code were necessary. We are not concerned with the question whether there is any apprehension of a breach of the peace which would justify the proceedings, for the Rule is limited to two grounds which are, in effect, that the subject-matter is not proper for proceedings under section 145 of the Criminal Procedure Code. Certainly, the facts seem at first sight not to lend themselves to such proceedings.

(1) (1898) I. L. R. 26 Calc. 188. (2) (1912) 17 C. W. N. 205.

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The stall-holders do not lay any claim to actual possession of any stall for five days or more in each week when it is conceded that the durwans of the proprietor are in charge of the whole place. Several rulings have been cited before us, but with one exception, they do not seem to have any application to the question before us. The exception is the case of *Manik Chandra Chakravarti v. Preo Nath Kuar* (1). It is quite true that the facts of that case again are considerably different from those of the present case; but they have this in common that one of the parties claimed the right to hold possession of a piece of land not continuously throughout the year but at long recurring intervals once every year, while in this case the stall-holders claim possession once every week. The difference appears to be one of degree rather than of kind. The learned Judges in disposing of that case said that an enquiry under section 145 of the Criminal Procedure Code must be directed to ~~the~~ decision of the absolute continuing possession of either party of the subject-matter of dispute. It appears to me that that element of continuity of possession is an ingredient which is necessary, at any rate, in cases where interruption is not due to seasonal variations, in proceedings under section 145 of the Criminal Procedure Code. In my judgment the Rule must be made absolute on the grounds on which it was issued, and the order of the Magistrate declaring the stall-holders to be in possession of the stalls set aside.

Rule absolute.

SUHBWARDY J. I agree.

E. H. M.