

plot became Government property and it ceased to be a part of mahal Raipur." It has been argued that this is a finding of fact which is binding on us. In our opinion it is not a finding of fact, but is a mixed finding of fact and law. We think that the learned Judge is not right in saying that the fact that the Government was owner of this plot at one time and held it revenue-free is the same thing as that the property ceased to be a part of the mahal. Section 32, clause (d), of the Land Revenue Act shows that there may be in the mahal persons holding land revenue-free and the land so held yet forms part of the mahal. In our opinion the finding of the District Judge is vitiated by his erroneous view of law. We allow this appeal, set aside the order of the learned District Judge and restore the decree of the court of first instance with costs in all courts.

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ABDUL  
RAHIM KHAN  
v.  
AHMAD  
KHAN.

*Appeal allowed.*

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## REVISIONAL CRIMINAL.

1914  
February, 20.

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*Before Mr. Justice Ryves and Mr. Justice Piggott.*

SAYEDA KHATUN v. LAL SINGH AND OTHERS.\*

*Criminal Procedure Code, sections 145 and 435—Revision—Jurisdiction—Powers of High Court.*

*Held* that the High Court has no power to interfere in revision with an order passed by a Magistrate under section 145 of the Code of Criminal Procedure. *Jhingan Singh v. Ram Partap* (1) and *Maharaj Tewari v. Har Charan Rai* (2) followed.

THE facts of this case were as follows :—

The applicant sued to eject the opposite party or their predecessors in title. The Revenue Court decreed the suit and they were ejected. They wrongfully resumed possession; they were sued in the Civil Court and were again ejected in execution of that court's decree. They again usurped the field, and a suit was again brought in the Civil Court for possession of the land along with the crops that might be standing on it. The suit was decreed on the 12th of June, 1913. On an application for execution of this decree an order was passed on the 13th of August, 1913, directing the amin

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\*Criminal Revision No. 47 of 1914 from an order of Gobind Prasad, Magistrate, first class, of Moradabad, dated the 19th of November, 1913.

(1) (1908) I. L. R., 31 All., 150.

(2) (1908) I. L. R., 26 All., 144.

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to put the applicant in possession of the land and also, on failure of the judgement-debtors to remove the standing crops, of those crops. On the next day the amin executed this order and reported that, as the judgement-debtors had not appeared to remove the crops, possession over the crops as well had been given to the decree-holder by beat of drum. Shortly after this, proceedings under section 145 of the Code of Criminal Procedure were taken against the parties in respect of these standing crops; and the Magistrate coming to the conclusion that possession was with the opposite party maintained them in possession by his order, dated the 19th of November, 1913. Hence this application in revision, which, coming up before Tudball, J., was referred by him to a Bench of two Judges.

Babu *Sarat Chandra Chaudhri*, for the applicant:—

The rights of the parties have been determined by a competent Civil Court; its decree has awarded to the applicant possession over the land and the standing crops. The Magistrate was not competent to go behind the decree; it was his duty to maintain it and give effect to it. He acted without jurisdiction in taking proceedings under section 145 calculated to modify or cancel the effect of this decree which was recently passed and in execution of which the amin had given the applicant possession only two or three months ago: *Doulat Koer v. Rameswari Koeri* (1), *Baldeo Baksh Singh v. Raj Ballam Singh* (2), *Kunjia Behari Das v. Khetra Pal Singh* (3), *In the matter of Raja Leelanund Singh* (4). The word "dispute" in section 145 means a *bona fide* dispute. The history of the litigation between the parties shows that now there exists no shadow or semblance of title in the opposite party. The "dispute", or in other words, the real or supposed uncertainty of title, which existed at one time has now been settled once for all by the Civil Court. This places the matter beyond the jurisdiction of section 145: *In the matter of Gobind Chunder Moitra v. Abdool Sayad* (5). Orders passed under section 145 are of the nature of tentative or interim orders, to have effect till the determination of rights by the Civil Court. No such orders need or can be passed where the rights have

(1) (1899) I. L. R., 26 Calc., 625.

(3) (1901) I. L. R., 29 Calc., 208.

(2) (1903) 2 A. L. J., 274.

(4) (1877) 1. O. L. R., 273.

(5) (1831) I. L. R., 6 Calc., 835 (841).

already been determined by the Civil Court. How can the Civil Court determine the same rights twice? The action of the Magistrate has rendered the Civil Court decree nugatory. The order being passed without jurisdiction can be revised.

Mr. D. R. Sawhny, for the opposite party:—

Proceedings under section 145 are expressly excepted from the operation of section 435. Except on the ground of want of initial jurisdiction such proceedings cannot form the subject of revision by the High Court. The Magistrate was duly empowered to act under Chapter XII of the Code of Criminal Procedure. There existed a dispute in fact, although it may be that none should have existed in law. So the Magistrate had jurisdiction to hold the inquiry and was properly seised of the case. The conclusion arrived at by him may or may not be correct, but that is no ground for revision. The arguments advanced by the applicant were considered in the case of *Jhingai Singh v. Ram Partap* (1). I rely on that case and also on the case of *Maharaj Tewari v. Har Charan Rai* (2).

RYVES and PIGGOTT J.J.:—In our opinion this case is covered by an authority of this Court in *Maharaj Tewari v. Har Charan Rai* (2). This case was followed in *Jhingai Singh v. Ram Partap* (1). We entirely agree with the view expressed in both these cases. We accordingly dismiss this application.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.*

1914  
February, 25.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANT) v.

JAWAHIR LAL (PLAINTIFF)\*.

*Act No. IX of 1908 (Indian Limitation Act), section 5—Civil Procedure Code (1908), order XXII, rules 4 and 9—Limitation—Parties—Application for substitution of names filed beyond time—Procedure.*

Section 5 of the Indian Limitation Act, 1908, does not apply to an application made under order XXII, rule 4, of the Code of Civil Procedure. Where, therefore, such an application is made after time, the suit or appeal must be

\* First Appeal No. 225 of 1912 from a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 4th of April, 1912.

(1) (1908) I. L. R., 31 All., 170. (2) (1908) J. L. R. 2d All., 144.