

official receiver's costs of resisting this application. Of course the appellant is entitled to the return of his security which he filed as a condition of being allowed to appeal. This order is without prejudice to any question as to whether he is liable or not on the alleged hundis. The hundis must be returned as soon as possible to the creditors. The appeal is allowed with costs.

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LAL.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Iqbal Ahmad.

BANKA SINGH v. GOKUL.*

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Criminal Procedure Code, section 145 (1)—Effect of omission to record an order under clause (1)—Illegality—Proceedings vitiated. December, 9.

Held, that the failure of the Magistrate to comply with the provision of clause (1) of section 145 of the Code of Criminal Procedure will vitiate the entire proceedings held in the case.

THIS was an application for revision of an order purporting to be passed under section 145 of the Code of Criminal Procedure. The facts of the case are fully set forth in the judgement of the Court.

Pandit *Ambika Prasad Pande*, for the applicants.

Munshi *Haribans Sahai*, for the opposite parties.

IQBAL AHMAD, J. :—The order of the learned Magistrate, dated the 13th of May, 1926, purporting to be one under section 145, Code of Criminal Procedure, cannot be supported.

It appears that on a petition, dated the 13th of March, 1926, filed by Gokul Ahir, the opposite party, against Sital Rai and certain other persons, the learned Magistrate passed an order purporting to be under section 144, Code of Criminal Procedure,

* Criminal Revision No. 575 of 1926, from an order of Ali Ausaf, Sessions Judge of Ghazipur, dated the 1st of July, 1926.

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directing the attachment of certain crops on plot No. 734-9-2. Banka Singh and others, the applicants before me, were no parties to those proceedings. When the police wanted to attach the crops the applicants before me filed an application in the court of the District Magistrate, who by an order dated the 29th of March, 1926, set aside the order of the Magistrate directing the attachment of the crops and in the exercise of the powers vested in him by section 436, Code of Criminal Procedure, directed a further inquiry under section 145, Code of Criminal Procedure, with a view to "restoring the crops to the party which was in possession of the same."

After the order of the learned District Magistrate the case came up before another Magistrate who had succeeded the Magistrate who had passed the order under section 144, Code of Criminal Procedure. That Magistrate, without recording an order as required by section 145 (1), Code of Criminal Procedure, and without directing a service of that order in compliance with the provisions of section 145 (3) of the Code, proceeded to decide the matter after taking into consideration the written statement filed by the parties and the evidence tendered by them. He has held that the title to and possession of the plot in dispute was with the applicant Gokul and on that finding has passed an order which is unintelligible to me and which is certainly not an order in terms of section 145 (6), Code of Criminal Procedure.

It is clear that the provisions of section 145 (1), Code of Criminal Procedure, are mandatory and a disregard of those provisions vitiates the entire proceedings in the case. As already stated, there was no order drawn up by the Magistrate stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace existed concerning the plot

in dispute, nor did he ever require the parties concerned to put in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. No such order having been drawn up, the provisions of section 145 (3), Code of Criminal Procedure, were not complied with inasmuch as there was no order in existence which could be served on the parties concerned. It is argued before me by the learned counsel who appears in support of the order that the order of the District Magistrate, dated the 29th of March, 1926, should be regarded as an order in terms of section 145 (1) of the Code. I cannot accede to this contention. As I read section 145, Code of Criminal Procedure, it appears to me clear that the Magistrate who has to draw up the order is the Magistrate who after drawing up the order proceeds to decide the case. It may be that a District Magistrate, after drawing up an order under section 145 (1) and after taking cognizance of the case under section 145, Code of Criminal Procedure, may, under certain circumstances, transfer the case for disposal to a Sub-Divisional Magistrate, but in this case it cannot be said that the learned District Magistrate ever purported to draw up an order under section 145 (1), Code of Criminal Procedure, or having drawn up such an order, ever transferred the case under section 145, Code of Criminal Procedure, of which he had taken cognizance to the Magistrate who eventually decided the same. I cannot treat the order dated the 29th of March, 1926, as an order under section 145 (1) of the Code. It is argued by the learned counsel for the opposite party that the irregularity, if any, is cured by section 537, Code of Criminal Procedure. That section applies to mere errors of procedure arising out of mere inadvertence and does not apply to cases of disregard of a mandatory and imperative provision of

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the Code. The failure of the learned Magistrate to comply with the provisions of section 145 (1), Code of Criminal Procedure, vitiates the entire proceedings held in the case and his order must be set aside. Accordingly I set aside the order of the learned Magistrate dated the 13th of May, 1926.

Order set aside.

APPELLATE CIVIL.

Before Mr. Justice Dalal and Mr. Justice Pullan.

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December,
14.

SRI THAKURJI (PLAINTIFF) v. JAIKALI KUNWAR AND OTHERS (DEFENDANTS).*

Bengal Regulation, No. XI of 1825, Alluvion and Diluvion, section 4—Land taken away by gradual accretion but restored by sudden change—Custom of dhardhura absent.

Where no custom of *dhardhura* is proved to exist, land which is taken away by the river gradually, but restored suddenly, if it is capable of identification, will still remain the property of its original owner.

THE facts of this case sufficiently appear from the judgement of the Court.

Munshi *Shiva Prasad Sinha*, for the appellant.

Mr. *Sankar Saran*, for the respondents.

DALAL and PULLAN, JJ. :—These two appeals arise out of a dispute between the riparian owners of villages situated on opposite banks of the river Rapti. Appeal No. 1025 is between the owners of the village of Shergarh and those of the village of Domingarh, and appeal No. 1062 is between the owners of the village of Haraiya on the one side and the owners of the villages of Domingarh and Bahrapur on the other. But no contest now remains between the

* Second Appeal No. 1025 of 1924, from a decree of Baij Nath Das, First Additional Judge of Gorakhpur, dated the 29th of February, 1924, confirming a decree of Hari Har Prasad, Second Additional Subordinate Judge of Gorakhpur, dated the 24th of April, 1923.