

bear their own costs, but has held that the plaintiffs' suit was a speculative one. The defendants have certainly been put to considerable expense in defending the suit, and we do not think that the mere entry in the *Riwaj-i-am* in favour of the plaintiffs' case is a sufficient reason for holding that their suit was so far justified that the defendants should not be allowed their costs. We accept the cross-objections and direct that the plaintiffs should pay the defendants' costs of the Lower Court also, and they will also pay any costs incurred in these cross-objections.

*Appeal dismissed, cross objections accepted.*

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### REVISIONAL CRIMINAL.

*Before Mr Justice Broadway.*

*Mussammat MALAN—Petitioner,*

*versus*

*MAKHAN SINGH AND OTHERS—Respondents.*

Criminal Revision No. 925 of 1921.

*Criminal Procedure Code, Act V of 1898, section 145—whether applicable to a joint holding, separate portion of which is held by each co-owner—necessity for inquiry into possession—revision by High Court.*

*Mussammat M.*, complainant Petitioner, filed an application under section 145, Criminal Procedure Code, alleging that she had been in possession of her husband's land since his death and that certain reversioners of her husband's property had forcibly taken possession of it and that she feared for her life. The Magistrate after a summary enquiry issued notice to the opposite party calling upon them to file their written statements with regard to the actual possession of the land. In the statements filed they claimed to be entitled to the land in question alleging that *Mst. M.* had remarried and further alleging that the *khata* was joint. *Mst. M.* was examined and stated that she had been in possession of the land for many years, that she did not know whether there had been any partition but that the various joint owners had held separate portions of the joint holding for themselves, each one being in actual possession of a definite portion. The

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Magistrate thereon, without any further inquiry, dismissed the application, holding that section 145, Criminal Procedure Code, was not applicable to disputes for possession of joint land.

*Held*, that section 145, Criminal Procedure Code, was applicable to a case where the dispute is between co-sharers, each claiming to be in possession of the disputed land to the exclusion of the others and that the Magistrate should have inquired and decided whether or not the applicant had been recently in actual possession.

*Dyawappa Basgunda*, in *re* (1), *Bijnath v. W. S. Street* (2), *asunta Kumari Dasi v. Mohesh Chaudhara* (3), and *Dhani am v. Bholath* (4), followed.

*Held also*, that the High Court has jurisdiction to interfere in a case where such irregularity has been committed.

*Vellagudi Kone v. Narayana Kone* (5), and *Marndanayakam v. Mohammad Rowshan* (6), followed.

*Revision from the order of Bawa Kanshi Ram, Magistrate, 1st class, Kasur, District Lahore, dated the 11th June 1921, rejecting the application.*

DAULAT RAM, for Petitioner.

NEMO, for Respondents.

BROADWAY, J.—On the 25th of April 1921, *Mussammatt Malan*, widow of Thakur Singh, filed an application in the Court of a Magistrate, 1st class, Kasur, under section 145, Criminal Procedure Code. She alleged that her husband had died some three years ago leaving him surviving a son and herself, that since the death of her husband she had been in possession of her husband's property and that her son had died about 1½ years ago. She further alleged that certain reversioners of her husband were interfering with her and that they had forcibly taken possession of her husband's property and that she feared for her life. The Magistrate made a summary enquiry and then passed an order on the 10th May 1921, holding that the dispute between the parties was as to certain joint lands left by the husband of *Mussammatt Malan* who would not allow the opposite party to cultivate, and that this dispute had

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(1) (1915) 29 Indian Cases 63.

(2) (1916) 20 Cal. W. N. 518.

(3) (1913) 17 Cal. W. N. 944.

(4) 23 F. R. (Cr.) 1902.

(5) (1915) 31 Indian Cases 645.

(6) (1916) 34 Indian Cases 329.

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assumed such proportions that a breach of the peace was imminent. He accordingly directed the issue of notices to the opposite party calling upon them to file their written statements with regard to the actual possession of the land. On the 11th June 1921 written statements were put in by four of the opposite party. In these statements they claimed to be entitled to the land in question, alleging that *Mussammatal Malan* had remarried and further alleging that the *khasra* was joint. Upon this the Magistrate recorded the statement of *Mussammatal Malan* who stated that she had been in possession of the land in question for many years and that she did not know whether there had been any partition of the joint holding but that the various joint owners had held separate portions of the joint holding for themselves, each one being in actual possession of a definite portion. Without any further enquiry and without taking the statements of the opposite party, the Magistrate dismissed the application, holding that section 1-5, Criminal Procedure Code, was not applicable to disputes for possession of joint land. Against this order *Mussammatal Malan* has come up to this Court under section 439, Criminal Procedure Code, through Mr. Daulat Ram.

It has been contended that the order of the Magistrate is entirely wrong and that he has failed in the exercise of his jurisdiction. After hearing counsel I am of opinion that this contention is correct. *Mussammatal Malan* clearly alleged that she was in possession of the land in question and the object of the proceedings was, or ought to have been, to ascertain how far her allegations were correct, *i. e.*, to decide whether or not she was or had been recently in actual possession. The mere fact that the revenue records showed that the holding was joint was not sufficient to stop the enquiry contemplated by section 145, Criminal Procedure Code. In *Dywanappa Basgunda, in re* (1) it was held that in proceedings under this section it was incumbent on the Magistrate to examine the parties and to take evidence. In *Bairjnath v. W. S. Street* (2).

(1) (1915) 29 Indian Cases 66.

(2) (1918) 20 Cal. W. N. 518.

it was held that the mere fact that there may be a joint title to land would not prevent the application of section 145. To the same effect is the decision in *Basanta Kumari Dasi v. Mohesh Chander Saha* (1) where it was held that section 145, Criminal Procedure Code, applied to a case where the dispute is between co sharers, each claiming to be in possession of the disputed land to the exclusion of the others and that sub-section (b) to section 145 did not render that section inapplicable to a case in which the parties are jointly entitled to the land in question. In *Dhani Ram v. Bhola Nath* (2) it was held that although the provisions of this chapter could not be applied to joint possession of joint property the Magistrate had acted with grave irregularity in not enquiring into the question of possession. In the present case the Magistrate has come to no finding on the question of actual possession, but, merely because the revenue records showed the holding to be joint, has refrained from exercising his jurisdiction in this matter. *Velayuda Kone v. Narayana Kone* (3) and *Marudanayakam v. Mohammad Rowthen* (4) are authorities for holding that this Court has jurisdiction to interfere in a case where such irregularity has been committed.

I accordingly set aside the order of the Magistrate and direct him to take up these proceedings anew, to examine the parties as required by law and to allow *Mussammât Malan* to prove her allegation that she had been in actual possession of the land.

*Revision accepted.*

(1) (1913) 17 Cal. W. N. 944.

(2) 28 P. R. (Cr.) 192.

(3) (1915) 31 Indian Cases 645.

(4) (1916) 34 Indian Cases 829.

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