

## CRIMINAL REVISION.

*Before Mr. Justice Mya Bu.*

1935

Jan. 28.

## U THI HA v. MAUNG NGAI.\*

*Criminal Procedure Code (Act V of 1898), s. 145—Order by magistrate as to possession of immovable property—Subsequent proceedings before another magistrate—Parties and property the same—Alteration of first order—Jurisdiction.*

Where a magistrate having jurisdiction has passed an order regarding immovable property under s. 145 of the Criminal Procedure Code another magistrate has no jurisdiction to alter such order in a subsequent proceeding between the same parties under the same section and relating to the same property. An order under s. 145 (b) of the Code is final and conclusive unless and until the High Court sets it aside, or unless and until such order has otherwise been vacated in due course of law or by agreement between the parties.

*Parbat Charan Roy v. Chowdhuri*, I.L.R. 35 Cal. 350—referred to.

MYA BU, J.—The question for determination in this reference is whether a Magistrate is competent to pass an order under section 145 of the Criminal Procedure Code regarding immovable property in respect of which a final order had been made in a previous proceeding under the same section between the same parties by a Magistrate having jurisdiction to pass the order.

The facts of the case are these. A dispute having arisen between two Buddhist monks, U Thi Ha, the first applicant, and U Nayada and U Kelatha (whose duly constituted agent the respondent is), U Thi Ha launched a proceeding under section 145 of the Criminal Procedure Code in November 1932, being Criminal Miscellaneous No. 13 of 1932 of the Court of the Additional Magistrate of Thabaung. In that proceeding U Kelatha and the present respondent were

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\* Criminal Revision No. 877B of 1934 arising out of Criminal Misc. Trial No. 13 of 1934 of the Additional Magistrate, Thabaung.

two of the three respondents. After due inquiry the Court disposed of that case by an order under section 145 (6) of the Criminal Procedure Code, declaring U Thi Ha to be entitled to possession of the seven pieces of paddy-land in dispute until evicted therefrom in due course of law, and forbidding all disturbance of such possession by the respondents to that proceeding until such eviction.

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The respondents in that proceeding, however, did not subsequently have recourse to the civil Court to have U Thi Ha evicted from the lands in question, but U Kelatha put in tenants on some of the pieces of land, thereby giving rise to prosecution for trespass by or at the instance of U Thi Ha. Ultimately, the respondent, as the duly constituted agent of U Kelatha, filed an application in the Court of the Additional Magistrate of Thabaung, being Criminal Miscellaneous No. 13 of 1934, for action to be taken against the applicants, U Thi Ha and his tenants, under section 145 of the Criminal Procedure Code in respect of some of the pieces of land affected by the order passed in Criminal Miscellaneous No. 13 of 1932. By this proceeding U Kelatha has virtually obtained a reversal of the previous order with reference to these pieces of land.

In my opinion, the order of the Magistrate in Criminal Miscellaneous No. 13 of 1934 is one that was passed without jurisdiction. A criminal Court has no right or authority to review a final order passed by it under section 145 of the Criminal Procedure Code; [see *Parbat Charan Roy v. Sajjad Ahmad Chowdhuri* (1)] and the fact that the

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Magistrate who disposed of the proceeding of 1932 was a different officer from the Magistrate who passed the order in the later case makes not the slightest difference. Unless and until the High Court sets aside the final order of a Magistrate passed under section 145 (6) of the Criminal Procedure Code, or unless and until such order has otherwise been vacated in due course of law, or possession has been surrendered amicably by the party in whose favour it has been passed, it is manifest that fresh proceedings under the same section in respect of the same property between the same parties cannot be initiated.

The order passed by the Additional Magistrate of Thabaung in Criminal Miscellaneous No. 13 of 1934 is, therefore, one made without jurisdiction and must be, and it hereby is, set aside. The result is that the order passed in Criminal Miscellaneous No. 13 of 1932, dated the 25th of December 1932, remains undisturbed and in full force and effect.