

1890.

VISHVANÁTH  
GOVIND  
DESHMÁNE  
v.  
RA'MBHAT.

rents of certain property which they allege is temple property. Even if it was a case of contest as to who are the lawful trustees of the temple, the suit would not be one falling within section 539. We do not, however, see that the defendants make any claim to be the trustees of the temple: they claim the shops as the owners thereof, and they deny that the plaintiffs are the managers of the temple entitled either to collect the rents of the shops or to interfere with their collecting the rents.

The questions at issue in the suit are really very simple, *viz.*, (1) whether the plaintiffs are the managers of the temple, (2) whether, as such, they are entitled to collect the rents of the shops in suit. The issues framed by the Subordinate Judge are well suited to bring these questions to trial. If these questions are found in the affirmative, the plaintiffs will be entitled to a decree. If found in the negative, their suit will have to be dismissed. There is nothing in section 539 which takes away the jurisdiction of the Subordinate Judge to hear and determine these questions and pass a decree in the suit.

We reverse the orders of the lower Courts and direct the Subordinate Judge to accept the plaint and dispose of the suit on the merits in accordance with law. Costs hitherto incurred to be costs in the cause and to be apportioned in the final decree.

*Order reversed and case remanded.*

## CRIMINAL REFERENCE.

*Before Mr. Justice Birdwood and Mr. Justice Parsons.*

IN THE MATTER OF HUCHA'PA AND SHIVAGANGA'VA.

*Criminal Procedure Code (Act X of 1882), Sec. 145—Time at which Magistrate is to determine who was in possession.*

Under section 145 of the Code of Criminal Procedure (Act X of 1882) a Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute at the time when the Magistrate decides the question of possession, and not at any time *previous* thereto.

\* Criminal Reference, No. 64 of 1890.

1890.  
September 24.

THIS was a reference, under section 438 of the Code of Criminal Procedure (Act X of 1882), by J. L. Johnston, Sessions Judge of Dhárwár.

The material portions of the reference were as follows:—

“On the report of the chief constable, Dhárwár Táluka, that there was a likelihood of a breach of the peace between Huchápa bin Gangápa and Shivagangáva kom Gangápa in regard to the possession of a house and valuable property contained therein, Mr. Wiltshire (Magistrate, First Class) commenced inquiry, and called for a report from the Mámlatdár and Second Class Magistrate of Dhárwár. Meanwhile Huchápa, the alleged adopted son of Gangápa, deceased, husband of Shivagangáva, made an application to the District Magistrate that the police had improperly interfered with his possession of the said property, whereupon the District Magistrate ordered the Mámlatdár to make a personal inquiry and a list of the property, and to report thereon. The Mámlatdár accordingly went to the house and, finding two rooms locked up and the keys with Huchápa, required him to produce them, and made a list of the property in the house, except that alleged to be underground, and forwarded it with his report and the keys, &c. On a further application of Huchápa the District Magistrate referred the matter to Mr. Wiltshire for disposal.

“Mr. Wiltshire some time after issued notices to the parties to show cause why the keys and the property in dispute should not be returned to the persons from whom they were received. He then joined the two matters together, *viz.*, the inquiry under section 145 of the Criminal Procedure Code on the report of the chief constable as regards tangible immoveable property, and the inquiry on the applications of Huchápa as regards the keys and the valuable moveable property alleged to have been attached by the police out of the custody and possession of Huchápa, though this procedure was objected to by the pleader for Huchápa,

“Mr. Wiltshire, Magistrate, First Class, found that Shivagan-gáva was in possession of the house, and declared her entitled to retain it, with the property in it, until ousted in due course of law, and forbade all disturbance of her possession in the mean-

1890.

IN THE  
MATTER OF  
HUCHÁPA  
AND  
SHIVAGAN-  
GAVA.

1890.

IN THE  
MATTER OF  
HUCHA'PA  
AND  
SHIVAGAN-  
GA'VA.

time. He ordered also that the keys should be returned to those from whom they were received, *viz.*, Huchápa and Shivagangáva.

“The procedure adopted by the Magistrate, First Class, in joining the two matters of inquiry mentioned above and in passing a joint order on them under a section which only partially applies, is illegal and irregular, especially when the notice referred to the keys and the keys alone, as I understand it.

\* \* \* \*

“Besides the possession which the Magistrate was legally bound to find on and support was possession at the time of the institution of the proceedings, and not at the time to which he went back and inquired into, at a time four months previous to the institution of the proceedings in any Court.

“I have stayed execution of Mr. Wiltshire's orders, and leave the matters in *statu quo* pending the orders of the High Court.”

*Branson* (with him *Máneksháh Jahángirsháh*) for Huchápa.

*Lang* (with him *Ganesh Rámchandra Kirloskar*) for Shiva-gangáva.

*Shántáram Náráyan*, Government Pleader, for the Crown.

*Branson* :—The Magistrate ought to have decided which of the parties was in possession at the time he entered upon the inquiry under section 145 of the Criminal Procedure Code and not at any time previous thereto. The wording of the section is clear and unambiguous.

*PER CURIAM* :—In his order of the 9th June last, the Magistrate says : “Ouster by one person of another lawfully in possession of property confers no rights on the former which I can recognise. I must refer back to a time previous to the quarrel, when so possession was peacefully enjoyed by one or other of the disputants. My enquiry must be directed to the question as to which party was in possession of the subject in dispute before any proceedings in the Courts had taken place in the matter.” In so ruling, the Magistrate has followed the decision of the Calcutta High Court in *Re Mohesh Chunder Khán*.<sup>(1)</sup> But that was a ruling under section 530 of Act X of 1872, the provisions of which

(1) I. L. R., 4 Calc., 417.

have been modified in the corresponding section (section 145) of the present Code of Criminal Procedure, under which the Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute at the time when the Magistrate decides the question of possession. As the Magistrate omitted to comply with the requirements of the law, we reverse his order, and we direct that, if he finds that a dispute likely to cause a breach of the peace still exists concerning the house to which his order relates, he should decide the question of possession according to law.

*Magistrate's order reversed and case remanded.*

---

## PRIVY COUNCIL.

---

RAHIMBHOY HABIBBHOY, (PETITIONER), AND C. A. TURNER,  
(OFFICIAL ASSIGNEE AND ASSIGNEE OF THE ESTATE OF ALLA'DINBHOY,  
AN INSOLVENT), (RESPONDENT).\*

P. C.\*  
1890  
November 15.

Petition for special leave to appeal from a decree of the High Court, Bombay.

*Privy Council, leave to appeal to—Prerogative right of Crown to admit appeal where leave to appeal refused by High Court—Final decree—Meaning of “final” in Section 595 of Civil Procedure Code (XIV of 1882)—Section 601 of Code—Practice—Procedure.*

Where a decree directing the taking of accounts which the defendant contends ought not to be taken at all, decides, in effect, that, if the result should be found to be against the defendant, he is liable to pay the amount, the decree is final within the meaning of section 595 of the Civil Procedure Code (XIV of 1882) for the purpose of appeal.

On the ground that a decree for an account was not final within that section, the High Court refused, under section 601, to grant the defendant a certificate.

On his application for special leave to appeal to Her Majesty in Council, not by way of an appeal from the local Court's refusal, but asking for the exercise of the prerogative right to admit an appeal:

*Held*, that, as leave could be granted on any other ground, should any appear, besides the ground that the Court had refused the certificate without good cause, while leave could also be granted on the latter ground, if established, to make this application was, perhaps, more convenient than to appeal from the order of refusal.

\* *Present*: LORD HOBHOUSE, LORD MACNAGHTEN, SIR B. PEACOCK, SIR R. COUCH, and LORD SHAND.