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Mookhopadhya v. *Bassider Ruhman Khondkhar* (1) decided by a Full Bench of this Court, in which the correctness or otherwise of the ruling in that case was considered; and it was there held that in the case of a raiyat whose tenancy could only be determined by a reasonable notice to quit, expiring at the end of the year, the raiyat was entitled to claim to have the suit in ejectment brought against him dismissed, on the ground that he had no such notice. This case does not seem to have been considered in the case of *Ram Lal Patak* v. *Dina Nath Patak* (2). And we further observe that in the recent case of *Kishori Mohun Roy Chowdhry* v. *Nand Kumar Ghosal* (3), a divisional bench of this Court (THE CHIEF JUSTICE and BANERJEE, J.) has held that in the case of a tenancy with an annual rent reserved, the tenant is entitled to six months' notice expiring at the end of the year of the tenancy before he can be ejected. In that case the suit for ejectment was dismissed upon the sole ground that a notice expiring at the end of the year was not given to the tenant.

The principle underlying the Full Bench case and the case last mentioned, in our opinion, equally applies to this case. The [207] learned vakil for the respondent has, however, argued that the case of *Ram Lal Patak* v. *Dina Nath Patak* (2) was not considered in the case of *Kishori Mohun Roy Chowdhry* v. *Nund Kumar Ghosal* (3). Whether this was so, we do not know; but as already mentioned, the case of *Hem Chunder Ghose* v. *Radha Pershad Paleet* (4), a case which was followed in *Ram Lal Patak* v. *Dina Nath Patak* (5), was discussed, but not followed in the case of *Rajendra Nath Mookhopadhya* v. *Bassidhur Ruhman Khondkhar* (1).

As already stated this was a case of an annual tenancy, and as such, the defendants could only be ejected at the end of a year of the tenancy.

The notice, therefore, should have called upon them to vacate at the end of the year, and it is obvious (and so it has been found by the Courts below) that the notice served upon them is not a sufficient or reasonable notice.

If, therefore, the notice was bad, the suit based upon such notice should, in our opinion fail.

In this view of the matter we direct that the decree of the Court below be set aside and the suit dismissed upon the ground that the notice served upon the defendants was not reasonable or sufficient. The appellants will recover costs in all the Courts.

Appeal decreed.

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29 C. 208.

[208] CRIMINAL REVISION.

Before Mr. Justice Ghose and Mr. Justice Taylor.

KUNJA BEHARI DAS *v.* KHETRA PAL SING.* [31st July, 1901.]

Possession—Decree of Civil Court—Magistrate, duty of—Code of Criminal Procedure (Act V of 1898), s. 145.

Where in execution of a decree a Civil Court had given symbolical possession of the lands in dispute to the first party on the 9th September 1900, and

* Criminal Revision No. 456 of 1901, against the order of Babu G. C. Mukerjee, Deputy Magistrate of Serampore, dated the 28th of February 1901.

(1) (1876) I. L. R. 2 Cal. 146.
(2) (1895) I. L. R. 23 Cal. 200.
(3) (1897) I. L. R. 24 Cal. 720.
(4) (1875) 23 W. R. 440.
(5) (1897) I. L. R. 24 Cal. 720.

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proceedings under s. 145 of the Code of Criminal Procedure were instituted between the parties to the decree in the following December, and the Magistrate found and maintained the possession of the second party :—

Held that the Magistrate was bound to give effect to the decree of the Civil Court and to maintain the party in possession, who under the decree had already been put in possession of the property in dispute.

Doulat Koer v. *Rameswari Koeri* (1) referred to.

IN this case the petitioner, Kunja Behari Das, instituted a civil suit against Khetra Pal Sing and others, the opposite party, for the recovery of possession of eight bighas of land, and in April 1900 obtained a decree in execution whereof symbolical possession was delivered to him by the Court on the 9th September 1900. Against this decree Khetra Pal Sing and others preferred an appeal, which was still pending in July 1901.

At the time of the reaping of the crops growing on this land, the petitioner being apprehensive of a breach of the peace by the opposite party applied to the police for assistance. The police submitted a report to the Deputy Magistrate of Serampore stating that there was a likelihood of a breach of the peace between the parties.

[209] Thereupon the Deputy Magistrate instituted proceedings under s. 145 of the Code of Criminal Procedure between the parties on the 3rd December 1900, but owing to some defect in these proceedings a fresh proceeding was instituted on the 3rd January 1901, and the Magistrate by an order, dated the 28th February 1901, found Khetra Pal Sing and others in possession of the land in dispute and ordered them to be maintained in possession.

Babu *Mohendra Nath Roy* for the petitioner.

Babu *Saroda Charan Mitter* for the opposite party.

GHOSE and TAYLOR, JJ.—It appears that there has been a decree between the parties, which was passed on the 28th April 1900, and although that decree has been appealed against to this Court, and that appeal is pending, yet we find that in execution thereof possession (though it may be called symbolical) was delivered to the petitioner on the 9th September 1900. The present proceeding was instituted on the 3rd December of the same year, and a fresh proceeding by reason of some defect in the earlier proceeding, was instituted on the 3rd January 1901.

The Magistrate, no doubt, finds that on the date of the institution of the proceedings under s. 145 of the Code of Criminal Procedure (he describes it as the date of the dispute), it is the second party that was in possession of the land involved in the proceedings, and he accordingly affirms the possession of that party, but in doing so he seems to have ignored the decree, to which we have made reference. That decree is binding between the parties, and so is the delivery of possession effected on the 9th September 1900, and, until that decree is set aside by a higher Court, it must be taken to be operative, and it is a decree which the Magistrate is bound to give effect to.

S. 145 of the Code in one of the paragraphs says : " If the Magistrate decides that one of the parties was in such possession (that is to say, upon the date of the institution of the proceedings or within two months antecedent thereto) of the said subject, he shall issue an order declaring such party to be entitled to possession thereof, until evicted therefrom in due course of law, and forbidding all disturbance of such possession, until such eviction."

(1) (1899) I. L. R. 26 Cal. 625.

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[210] Now it is obvious that the order of a Magistrate under s. 145 is meant to be only a temporary or tentative order, and is to be operative so long only as the rights of the parties are not determined by a Civil Court. In the present case the rights of the parties have been determined by a Civil Court, and therefore it seems to be plain that the Deputy Magistrate was not competent to ignore the decree of the Civil Court. We observe that the proceedings under s. 145 were instituted within a very short time, that is within three months of the date of the delivery of possession to the decree-holder, the petitioner, and that being so, it seems to us that there was really no difficulty in the way of the Magistrate giving effect to the decree of the Civil Court and maintaining the party in possession who under that decree had already been put in possession of the property in dispute.

In this connection we may refer to the observations in the judgment of a Divisional Bench of this Court in the case of *Doulat Koer* v. *Rameswari Koeri* (1). The particular passage which we desire to refer to being in page 628 of the report. There, a decree had been passed between the parties and the learned Judges in dealing with the questions raised observed as follows: "Now the object of s. 145, as we understand it, is to enable a Magistrate to intervene and to pass a temporary order in regard to the possession of the property in dispute to have effect, until the actual right of one of the parties has been determined by any competent Court. It is consequently his duty when that right has been declared within a time not remote from his taking proceedings under s. 145 to maintain any order which has been passed by any competent Court, and, therefore, to take proceedings which necessarily must have the effect of modifying or even cancelling, such orders, is to assume a jurisdiction, which the law does not contemplate. In this case we have it that so late as the end of August possession was formally given over to Doulat Koer. Nevertheless, the Magistrate has found that Dulin Shaheba obtained possession about the same time, and that she and not Doulat Koer is shown to have been in actual possession," and so on.

[211] We agree in the view herein expressed.

We think that in the circumstances of this case, the Deputy Magistrate had no authority to make the order, which he has made in this case, an order which had the effect of nullifying the decree of the Civil Court.

The rule will accordingly be made absolute.

Rule made absolute.

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29 C. 211.

APPELLATE CRIMINAL.

Before Mr. Justice Stevens and Mr. Justice Harington.

SURAT LALL CHOWDHRY *v.* EMPEROR.* [21st January, 1902.]

Transfer—Application for adjournment of trial before hearing—Duty of Court to grant reasonable adjournment—Refusal to adjourn trial, effect of on subsequent proceedings—Code of Criminal Procedure (Act V of 1898), s 526, cl. (8).

The law does not require that an application for postponement under sub-s. (8) of s. 526 of the Code of Criminal Procedure, or an application to the

* Criminal Appeal No. 671 of 1901.

(1) (1899) I. L. R. 26 Cal. 625.