

Before Mr. Justice Prinsep and Mr. Justice Stephen.

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Feb. 3.

LOKENATH SHAH CHOWDHRY

v.

NEDU BISWAS.*

Attachment of property by Magistrate under s. 146 of the Criminal Procedure Code—Order relating to the management of such property—Interference by High Court—Jurisdiction—Criminal Procedure Code (Act V of 1898) ss. 145, 146, and 435—Charter Act (24 and 25 Vic. c. 104) cl. 15.

Where a Subordinate Magistrate passed an order under s. 146 of the Criminal Procedure Code attaching certain lands, the subject-matter of proceedings under s. 145 of the Code, and in management of this property granted a lease for a term of years at a certain annual rent, and subsequently, on the application of the lessee, the District Magistrate cancelled that lease and granted a fresh lease at a much lower rent:

Held, that no question of jurisdiction arose in the matter. That the High Court in the exercise of its Criminal Jurisdiction will not interfere with an order relating to the management of property under attachment by reason of an order under s. 146 of the Code. A remedy can be easily obtained from a Civil Court.

In this case a proceeding under s. 145 of the Code of Criminal Procedure was instituted in September 1899 at the instance of the first party, Nedu Biswas and others, in respect of certain lands in the district of Faridpur. On the 23rd March 1900 the Deputy Magistrate of Faridpur disposed of the case, and declared certain portions of the disputed land to be in the possession of the second party, the petitioners, Lokenath Shah Chowdhry and others, and attached the remaining portion under s. 146 of the Code. In May 1900 the Deputy Magistrate settled the attached portion of the disputed land with the lessee, a mukhtear, for a period of ten years at an annual rent of Rs. 2,550, a *kabuliat* being executed and duly registered by the lessee.

Subsequently, upon a petition being presented by the lessee to the Court of the District Magistrate for reduction of rent,

*Criminal Revision No. 848 of 1901, made against the order passed by K. O. De, Esq., District Magistrate of Faridpur, dated the 31st of July 1901.

the District Magistrate on the 24th April 1901 directed the lessee to execute a fresh *kabuliat* at a lower annual rent of Rs. 455-2 for ten years, extending from April 1901, and ordered a refund of the excess amount of rent.

Mr. Hill, Mr. K. N. Sen Gupta, and Babu Surendra Nath Ghosal for the petitioners.

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Cur. adv. vult.

PRINSEP and STEPHEN JJ. In the matter before us a Subordinate Magistrate passed an order under s. 146 of the Code of Criminal Procedure attaching certain lands, the subject-matter of proceedings under s. 145, and in management of this property granted a lease. The District Magistrate has cancelled this lease and made another arrangement. We are required by this rule to consider whether the District Magistrate acted without jurisdiction. It is necessary also to consider whether this Court has jurisdiction to act as a Court of Revision in such a matter, and if so, whether it should do so, having regard to the circumstances of the case.

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The law permits the intervention of a Magistrate in a dispute concerning the possession of land only to prevent a breach of the peace. Any order that he may pass declaring or maintaining the possession of one of the parties to the dispute is operative until the party in whose favour it is made is "evicted therefrom in due course of law (s. 145)." Under certain circumstances, in cases under s. 146 he may attach the property in dispute, but the duration of such attachment is similarly limited. "He may attach it until a competent Court has determined the rights of the parties thereto or the person entitled to possession thereof." S. 435 of the Code of 1898 places proceedings under this Chapter beyond the powers of the High Court in Revision, leaving the parties to their remedy in the Civil Court. The High Court has, however, under powers conferred by the Charter Act taken cognizance of such matters, if it is shown that the proceedings are without jurisdiction. There is no case that we are aware of in which the High Court has interfered with an order relating to the management of

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the property under attachment by reason of an order under s. 146. The question therefore arises whether the High Court can interfere in such a matter. If, for purposes of management, the attached property had been made over to the Collector or a Revenue officer, no question of jurisdiction in regard to an order made by him could properly be raised before the High Court in its Criminal Jurisdiction. We may take it also that an order passed by a Receiver would lie beyond such jurisdiction. Does the fact that the order objected to has been passed by the District Magistrate make the matter different? We think that no distinction can be properly made. But such a matter can be also regarded from another point of view. If the High Court could act, should it do so? The intervention of the Magistrate, as has been already shown, is only temporary. The parties are left to their remedy in the Civil Court for a final decision as to their respective rights. In the present case the petitioner complains of the injury likely to be caused by the Magistrate's order "in the event of a declaration by the Civil Court in his favour." It is beyond doubt that recourse must be had to the Civil Court for a final settlement of the matter in dispute, pending which the Magistrate by an attachment holds the land. Surely, therefore, if anything is done during the attachment to which a party to the proceeding objects, he should at once go to the Civil Court, which has ample jurisdiction to deal with the whole question and to remedy anything done likely to injure the party who may ultimately succeed in obtaining possession of the property. It is not the policy of the law to interpose any obstacle to such final settlement, nor is it in any point of view desirable that a Criminal Bench of the High Court should consider the propriety or legality of an order (supposing that it has jurisdiction to do so) when a remedy can be easily obtained from a Civil Court. Such intervention would, moreover, only tend to prolong an attachment, which obviously should be as short as possible in duration. The rule is therefore discharged as without merit on either ground.

Rule discharged.

D. S.