

APPELLATE CRIMINAL.

Before Mr. Justice Pontifex and Mr. Justice Field.

IN THE MATTER OF GOBIND GHUNDER MOITRA (PETITIONER)
v. ABDOL SAYAD AND OTHERS (OPPOSITE PARTY).*

1881
March 4.

Criminal Procedure Code (Act X of 1872), ss. 491, 530—Dispute likely to cause Breach of the Peace—Decision on Title by Civil Court—Police Report—Incorporation of, by Reference.

On the 20th of March 1879, *A* applied to have certain lands, which he had lately purchased, registered in his name. The order of the Deputy Collector, declaring that *A* had proved possession, and was entitled to registration, was not passed until the 24th December 1879. Prior to *A*'s purchase, *B* and *C* had, on the 6th March 1879, obtained registration of the same property. The proceedings were sent to the Commissioner, who, on the 29th September 1880, declared *A* to be entitled to the land; and in October the registration in the names of *B* and *C* was cancelled, and *A*'s name was finally registered. In July 1880, proceedings under s. 530 of the Criminal Procedure Code were commenced upon the petition of certain ryots, who alleged that other ryots, at the instigation of *A*, were going to do acts which would lead to a breach of the peace. The Deputy Magistrate, the same person who as Deputy Collector had decided the land-registration case in favor of *A*, proceeded under s. 530 to consider the question as to who was in possession, and found that *B* and *C* were in possession.

Held, that the Deputy Magistrate could not, in these proceedings, set aside the order which he had made in the registration-case, as that order could only be set aside in a regular suit.

The proceedings recorded by the Deputy Magistrate did not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question, between *A* on the one side, and *B* and *C* on the other; nor did it set forth the grounds upon which he was so satisfied that such dispute existed.

Held, that the proceeding was therefore defective.

In the proceedings, the Magistrate referred to a police report, which, however, did not show that a breach of the peace was imminent.

Held, that although this report might be taken to be incorporated by reference, yet that it was not sufficient to justify the order.

* Criminal Motion, No. 37 of 1881, against the order of Baboo Dwarka Nauth Roy, Deputy Magistrate of Pubna, dated the 20th January 1881.

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Per FIELD, J.—Unless the parties are able to show that there is such a dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand and not proceed further. When the rights of the parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistracy to maintain the rights of the successful party, and the proper course for the Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under s. 491 of the Criminal Procedure Code, and require from such person security to keep the peace.

IN this case a rule had been obtained by one Gobind Chunder Moitra, calling upon one Abdool Sayad and others, to show cause why an order of the Deputy Magistrate of Pubna, made under s. 530 of the Criminal Procedure Code, declaring that Abdool Sayad and others were entitled to retain possession of certain lands until ousted by due course of law, and forbidding all disturbance of possession until such time, should not be set aside.

The facts of the case sufficiently appear from the judgment of PONTIFEX, J.

Mr. *H. Bell* and Baboo *Ishur Chunder Chuckerbutty* in support of the rule.

Mr. *Lee* and Baboo *Tarucknath Paulit* showed cause.

The following judgments were delivered :—

PONTIFEX, J.—I think this rule must be made absolute, and the order of the Deputy Magistrate must be set aside. In giving my reasons for this decision, it is necessary to advert shortly to some circumstances which preceded the order made by the Deputy Magistrate. The person moving for the rule is one Gobind Chunder Moitra, who alleges that, in March 1879, he purchased the property with respect to which the order which he seeks to set aside was made under s. 530 of the Code of Criminal Procedure, the date of such order being the 20th January 1881.

On the 20th March 1879, Gobind Chunder applied, under the Land Registration Act, to have the land registered in his name. The decision of the Deputy Collector, in which he found that Gobind Chunder had proved possession and

was entitled to registration, was not passed until the 24th December 1879.

Now it appears that, prior to this alleged purchase by Gobind Chunder Moitra, Abdool Sayad and Abdool Majid, who now oppose the rule, had obtained registration of the property in their names, under the Land Registration Act, on the 6th March 1879. It was therefore impossible for the Deputy Collector, on the 24th December 1879, to direct that the land should be registered in the name of Gobind Chunder Moitra. It was necessary that, for that purpose, his proceedings should go up to the Commissioner, who, if he confirmed the decision of the Deputy Collector, alone had the power to direct that the registration in the names of Abdool Sayad and Abdool Majid should be cancelled in order that registration might be effected in the name of Gobind Chunder Moitra. The proceedings accordingly went before the Commissioner, but it was not until the 29th September 1880 that he passed his final orders, and under those orders, in the month of October 1880, the registration in the names of Abdool Sayad and Abdool Majid was cancelled, and Gobind Chunder Moitra's name was finally registered. These registration-proceedings, therefore, occupied a period extending from the 18th March 1879 to October 1880. It must, however, have been manifest to Abdool Sayad and Abdool Majid, from the 24th December 1879, when the Deputy Collector decided in favor of Gobind Chunder's possession, that there was every probability that the result of the proceedings would be, that the property would be registered in the name of Gobind Chunder Moitra. As it seems to me, to evade these consequences, and while the reference was pending before the Commissioner in order that his ultimate orders might be obtained, recourse was had to proceedings under s. 530, which were commenced in July 1880.

In the registration-proceedings under the Land Registration Act, the Deputy Collector had decided the question in the presence of both parties. Each party had had an ample opportunity of adducing all the evidence that he thought necessary to prove his case. Each party did adduce evidence, and upon that evidence the Deputy Collector, acting under

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the Land Registration Act, finally decided that Gobind Chunder Moitra *had proved possession*, and that he was entitled to have his name registered. Now the criminal proceedings in July 1880 were started by certain ryots submitting a petition of complaint, alleging that other of the ryots, at the instigation of Gobind Chunder Moitra, were going to do certain acts which would tend to a breach of the peace. Upon the receipt of that complaint, a police report was called for, and a report was accordingly made by the police. Their report is, that there were two persons who claimed to be landlords; that certain of the ryots took the part of one side, and others of the other side; and that, at a future time, when the crops came to be cut, it was probable that the ryots of one side might cut the crops which had been grown by the other side, and a breach of the peace might ensue; but the police recommended that it would be sufficient if the leading ryots on either side were bound over to keep the peace. Upon that report, the District Magistrate, who possibly had no notice of the registration-proceedings, held a proceeding under s. 530, and referred it to the Deputy Magistrate, who was the very same person who as Deputy Collector had decided the land-registration case in favor of Gobind Chunder Moitra, finding that he had proved that he was in possession of this property. The Deputy Magistrate took evidence with respect to the complaint under s. 530. There was nothing in the police report to implicate Gobind Chunder Moitra in any of the acts out of which it was suspected a breach of the peace might ensue. The police had only implicated the ryots. But notwithstanding, the Deputy Magistrate, in his office of Deputy Collector, had so recently, and after a full investigation, decided that possession was in Gobind Chunder Moitra, he considered that he might altogether disregard his prior proceedings as Deputy Collector, and proceed again under s. 530 to determine who was in actual possession of this land, being the very same question which he had already tried and decided.

Now, in my opinion the fact that these registration-proceedings were pending at the time that the application was made for interference under the Criminal Procedure Code, should

have made the Deputy Magistrate extremely careful not to make any order as to possession under s. 530, unless he was quite satisfied that a *bonâ fide* dispute existed, and that a breach of the peace was imminent.

The Meahs, knowing that the registration-proceedings could, under ordinary circumstances, only properly be set aside by a regular suit, thought they might avoid being obliged to resort to that remedy, if they could set the Criminal Court in motion under s. 530, and hence this alleged quarrel between the ryots and the application to the District Magistrate.

Unfortunately, the Deputy Magistrate, altogether disregarding the former order that he made after a full trial, has now entirely rendered nugatory his order of October 1880. In my opinion the Deputy Magistrate, knowing that the land-registration proceedings only awaited formal completion, ought not to have proceeded under s. 530 to deal with the question of possession—a question which he had himself so recently decided in the presence of both parties.

It would have been quite sufficient, if he thought a breach of the peace was imminent, to bind over the leading ryots on either side as recommended by the police. There was nothing to show from the police report that Gobind Chunder Moitra was implicated in the acts complained of, and it seems to me, in passing the order in respect of possession and in setting aside his own order, the Deputy Magistrate was acting improperly and unfairly to Gobind Chunder Moitra. It was never intended that the provisions of s. 530 should be used for the purpose of avoiding a decision so recently arrived at after a full trial.

The rule will be made absolute, and the order of the Deputy Magistrate set aside.

FIELD, J.—I also am of opinion that this rule must be made absolute, and the order of the Deputy Magistrate set aside. Under s. 530 of the Criminal Procedure Code, a Magistrate, in order to give himself jurisdiction, must first record a proceeding setting forth that he is satisfied that a dispute likely to induce a breach of the peace exists concern-

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ing land, &c., and this proceeding must state the grounds upon which he is so satisfied. It appears to me that, in the case before us, the proceeding recorded by the District Magistrate is defective in that it does not set forth in express language that he was satisfied that a dispute likely to create a breach of the peace existed in respect of the land in question between Gobind Chunder Moitra on the one side, and the Meahs on the other side; and that it is further defective in that it does not set forth the grounds upon which he was so satisfied that such dispute existed. The Magistrate's proceeding refers to a police report, which may perhaps be taken to be incorporated by reference. I think the proceeding itself ought to contain all the particulars essential to give the Magistrate jurisdiction, and that reference to any other document ought not to be necessary in order to the ascertainment of these essential particulars. But even if the police report be here taken to be part of the proceeding, the above defects are not removed, as this report shows merely that there was a dispute between two sets of ryots in the village, who had respectively taken the sides of Gobind Chunder Moitra and of the Meahs. Now the ryots are not parties to the present proceedings, the only parties being Gobind Chunder Moitra on the one side, and the Meahs on the other side; and it thus appears that the real "parties concerned in the dispute" were not the parties called upon to attend Court and state their claims to actual possession. There is another ground upon which it appears to me that the order of the Deputy Magistrate in this case should be set aside; and that is, because there was no such *dispute* as is contemplated by s. 530. When once a Magistrate has recorded the preliminary proceeding under the section, and has called upon the parties concerned in the dispute to appear before him, the express language of the section does not provide for any further inquiry into the fact of the existence of a dispute likely to induce a breach of the peace. When the parties appear before the Magistrate, the law expressly requires only that the fact of actual possession be inquired into. But it appears to me that the essence and basis of the jurisdiction, which a Magistrate can exercise under s. 530,

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depends upon there being a dispute likely to create a breach of the peace; and that, when the parties appear before the Magistrate, if they are able to show, or if it otherwise appears to the Magistrate that there is no dispute, or no such dispute as is likely to induce a breach of the peace, the Magistrate should hold his hand and not proceed further.

I take it that the term "dispute" in s. 530 means a reasonable dispute, a *bonâ fide* dispute, a dispute between parties who have each some semblance of right or supposed right. It has been decided by this Court, in the case of *Rai Mohun Roy v. Wise* (1), that when a decree has been passed by a Civil Court regarding land in dispute, it is the duty of a Magistrate to maintain it; and he has no power again to institute proceedings regarding such land under this section of the Code of Criminal Procedure. The principle of this decision is this, that when the rights of parties have been determined by a competent Court, the dispute is at an end, and it is the duty of the Magistracy to maintain the rights of the successful party. In other words, the defeated party will not be allowed to go to the Criminal Court, and alleging the existence of a dispute, invoke the aid of the Magistrate and the police to neutralize the effect of the decree of a competent Civil Court. When the rights of the parties have been determined, there is no longer a "dispute" within the meaning of s. 530; and the proper course for a Magistrate to pursue, if the defeated party does any act that may probably occasion a breach of the peace, is to take action under s. 491 of the Code of Criminal Procedure and require from such person security to keep the peace.

In the case of *Rai Mohun Roy v. Wise* (1), the question of title had been definitively determined by the Civil Court; and no case has, so far as I am aware, as yet arisen in which the principle of that decision has been carried further, or extended to cases in which there has been merely a summary adjudication upon the question of possession. I think, however, that the proceedings under the Land Registration Act are proceedings to which the same principle should be extended.

(1) 16 W. R., Cr. Rul., 24.

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Under this Act a revenue officer is directed to hold an inquiry; that inquiry in this particular instance was held in the presence of both parties; and they had an opportunity of producing before the revenue officer evidence to show that they were in possession of the land. After making his inquiry, the revenue officer came to the conclusion that Gobind Chunder Moitra was in possession; his name was registered in the Collector's general register as that of the person in possession of the estate; and the result of this registration is, that the Meahs are not entitled to sue the tenants for rents; for to any such suit it is a sufficient defence that their names are not registered in the Collector's general register.

If, after these formal proceedings before the revenue authorities, it is competent to the Magistrate to take action under s. 530, an order made under this section may absolutely neutralize the effect of the registration proceedings (as has happened in this case), and great confusion and possible injustice may be done. Persons who have had experience in the mofussil are well aware why an order under s. 530 is so strenuously sought after in many cases. Such an order is important as regards the question of limitation. The person who is declared by the order of the Magistrate to be in possession under s. 530 can successfully set up such possession in answer to a plea of limitation.

The question of burden of proof, no unimportant question in many cases, depends materially upon whether a party occupies the position of a plaintiff or a defendant in a civil suit, and the person who succeeds in getting the Magistrate to declare him to be in possession, obtains no small vantage ground for subsequent litigation, *melior est conditio defendentis*.

Then whether a person who had a good title will be able to procure witnesses to give evidence in his favor, depends in no slight degree upon whether he is in possession or out of possession. Regard being had to these considerations, I think that Magistrates should be most careful in applying the provisions of s. 530; that they should not proceed to act under this section unless they are satisfied that a dispute, a *bonâ fide* dispute, a reasonable dispute, a dispute in which

there is some semblance of right on either side, exists, and that such dispute is likely to induce a breach of the peace. I am satisfied that it was not the intention of the Legislature that the provisions of this section should be applied to any case in which a competent Court, whether in a regular suit or in that sort of proceeding which is in this country known as a summary proceeding, has decided that one person is entitled to, or is in possession of, land.

I may refer to s. 535 of the Code of Criminal Procedure by way of further argument in support of this view. This section enacts, that "nothing in this chapter shall affect the powers of a Collector or a person exercising the power of a Collector or of a Revenue Court." The officer acting under the Land Registration Act is probably a Revenue Court; and if a Magistrate may, under s. 530 of the Code of Criminal Procedure, decide that a person is in possession, whom a revenue officer has under the provisions of the Land Registration Act held not to be in possession, the powers of such revenue officer or Court would be materially affected.

It therefore appears to me that the order of the Deputy Magistrate should be set aside, (1st) because the initiative proceeding of the District Magistrate was defective; (2nd) because the whole of the proceedings were without jurisdiction.

Rule absolute.

PRIVY COUNCIL.

KAMESWAR PERSHAD (PLAINTIFF) *v.* RUN BAHADUR SINGH
(DEFENDANT).

P. C.*
1880
Nov. 23.

[On Appeal from the High Court of Judicature at Fort William in Bengal.]

Grounds supporting charge on the Inheritance by a Widow for her Debt.

In transactions such as the alienation by a widow of her estate of inheritance derived from her husband, any creditor, seeking to enforce a charge on such estate, is bound, at least, to show the nature of the transaction,

* *Present*:—SIR J. W. COLVILLE, SIR B. PEACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.

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