

CRIMINAL REVISION.

Before Mr. Justice Sharhuddin and Mr. Justice Coxe.

1908

December 12.

KISHORI LAL ROY

v.

SRINATH ROY.*

Criminal Procedure Code (Act V of 1898), ss. 145, 192(2) and 529 (f)—Dispute concerning land—Jurisdiction of Magistrate—Pendency of a civil suit for possession of the disputed land—Subsistence of prohibitory order on the date of the proceeding—Transfer of case without jurisdiction—Likelihood of a breach of the peace.

The pendency of a suit under section 9 of the Specific Relief Act (I of 1877) with regard to certain land in dispute does not oust the Magistrate's jurisdiction to take proceedings under section 145 of the Criminal Procedure Code in respect of the same land, if he finds reasonable grounds for apprehending a breach of the peace.

The fact that on the date of the initiation of the proceedings under section 145 of the Code there was a subsisting order under section 144, the terms of which were not before the Court, passed against the landlords in a proceeding, to which the tenants, through whom they claimed to be in possession, were not parties, does not justify the Court in setting aside the proceedings under section 145, in respect of the same subject matter of dispute, as without jurisdiction.

A transfer by a first class Magistrate of a case under section 145 erroneously and in good faith does not vitiate the proceedings by reason of the provisions of section 529 (f).

Akbar Ali Khan v. Domi Lal (1) followed.

Section 145 requires that the Magistrate, before initiating proceedings thereunder, must be satisfied, on the materials before him, that there is fear of a breach of the peace with regard to some immoveable property between the parties.

Where the Magistrate initiated proceedings under section 145 on a police report on which he was satisfied that there was an apprehension of a breach of the peace, and there was evidence on the record of a probability of such breach of the peace, the High Court refused to set aside the final order as without jurisdiction.

* Criminal Revision No. 1092 of 1908, against the order of G. C. Banerjee, Deputy Magistrate of Dacca, dated the 28th August 1908.

(1) [1900] 4 C. W. N. 821,

CRIMINAL RULE.

UPON the receipt of a police report, dated the 25th February 1908, stating that there was a likelihood of a breach of the peace between Srinath Roy, the first party, and the petitioners, regarding the possession of certain *chur* land, a Deputy Magistrate of Dacca issued a prohibitory order under section 144 of the Code, on the 28th February, on both parties. Thereafter upon a fresh police report of the 12th April, F. Husain, a Deputy Magistrate of the first class, initiated proceedings, on the 23rd instant, under section 145 in respect of the same land against the parties calling upon them to file written statements of their respective claims as regards the fact of actual possession of the subject of dispute, and ultimately transferred the case for disposal to G. C. Banerjee, another first class Deputy Magistrate, who added certain other persons, as third party, and directed them also to file written statements and produce evidence. The first and third parties claimed to be in possession of the *chur* through their tenants, while the second party claimed to be in sole possession also through their tenants.

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It appeared that on the 8th February, 1908, a suit under section 9 of the Specific Relief Act was instituted for the recovery of possession of the same *chur*, which was pending at the time of the present proceedings. The second party urged before the Magistrate that his jurisdiction was ousted by the suit, but the objection was overruled, and he declared the first and third parties to be entitled to possession by his order, dated the 28th August, passed after taking evidence in the case.

Mr. Garth and Babu Surendra Nath Ghosal for the petitioners.

Mr. Dunne and Babu Baikanta Nath Das for the first party.

Mr. P. L. Roy and Babu Harendra Narain Mitter for the third party.

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SHARFUDDIN AND COXE JJ. This is a Rule on the District Magistrate of Dacca and also on the opposite party to show cause why the order of Babu G. C. Banerjee, Deputy Magistrate, dated the 28th August 1908, should not be set aside on the grounds mentioned in the petition.

The first ground is that, as a suit under section 9 of the Specific Relief Act with regard to the property in dispute was pending, the Magistrate was not competent to proceed under section 145 of the Criminal Procedure Code. With regard to this point no authority has been shown to us except an unreported case. (1) But certainly in that case it is nowhere laid down that a Magistrate has no jurisdiction to proceed under section 145 with regard to properties that may be the subject of civil proceedings. Such proceedings certainly cannot take away the jurisdiction of the Magistrate to initiate proceedings under section 145, if he finds reasonable grounds for apprehending that without such proceedings a breach of the peace may be caused.

The second ground taken is that, inasmuch as on the day of the initiation of the proceedings under section 145 a subsisting prohibitory order, dated the 28th February, under section 144 of the Criminal Procedure Code, was in force against the parties, the lower Court was not competent to hold that on the 23rd April, 1908, the first party and the third party were in possession through their tenants. We find that the first and the third parties appear to have a common cause, and claim to be in possession of the *chur* in dispute through their tenants. The second party claims to be in exclusive possession of the *chur* land, also through their tenants. The prohibitory order mentioned above is not before us, and we cannot say what its terms were, but at any rate it appears that the tenants were not parties to the proceedings under section 144 of the Criminal Procedure Code. That being so, the fact that an order of some kind, the precise nature of which is not known, had been framed against the landlords, does not

(1) Criminal Revision No. 731 of 1908.

authorise us to set aside the subsequent finding that the first and third parties were in possession through tenants as without jurisdiction. Thirdly, it has been argued that Mr. F. Husain had no power to transfer cases at all, and certainly had no power to transfer cases of this nature. It is laid down in *Akbar Ali Khan v. Domi Lal* (1) that a Subordinate Magistrate cannot be empowered under section 192 (2) to transfer cases of this nature, but that case is also authority for holding that this defect is cured by section 529 (f) of the Criminal Procedure Code. Learned Counsel for the petitioner attempts to distinguish that case on the ground that in the present case Mr. Husain had no powers under section 192 at all. But we have no doubt that he has such powers. The Magistrate in his explanation states that he has them. We find from the Civil list that Mr. Husain is the Senior Magistrate with first class powers except the District Magistrate, and such Magistrates are almost invariably given these powers, and, indeed, must be given them to enable the work to be distributed when the District Magistrate is away. Finally, it seems to us wholly unlikely and opposed to experience that any Deputy Magistrate should usurp these powers. It is urged that a copy of the order authorising Mr. Husain to transfer cases ought to have been submitted, but it may well have seemed to the trying Magistrate that the above considerations are self-evident, and do not require further proof. We certainly are not prepared to assume on these materials that Mr. Husain has no power to transfer cases of any kind, and we have no doubt that he acted in entire good faith.

The last ground taken was that there is nothing to show that there was any reason for apprehending a breach of the peace between the parties, and the Magistrate, therefore, was not competent to pass the order complained against. What is required under section 145 is that the Magistrate, before initiating proceedings under that section, must be satisfied on the materials before him that there is fear of a breach of the

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peace with regard to some immoveable property between the parties. We find that the Magistrate initiated these proceedings on a report on which he was satisfied that there was an apprehension of a breach of the peace. We also find from the explanation of the Magistrate that there is evidence on the record that there was a probability of a breach of the peace. On these findings we cannot say that the Magistrate acted without jurisdiction.

Under these circumstances, we think that all the grounds taken by the second party fail.

In conclusion we may observe that in issuing this Rule we did not attach any importance to the allegations made in the third paragraph of the petition. The Rule was granted on other grounds. The result is that the Rule is discharged.

Rule discharged.

E. H. M.