FULL BENCH.

Before Sir Francis W. Maclean K.C.I.E., Chief Justice, Mr. Justice Banerjee, Mr. Justice Harington, Mr. Justice Pratt and Mr. Justice Henderson.

DHONDHAI SINGH

v.

FOLLET.*

1903
July 11.

Jurisdiction—Manager or Agent, possession of—Criminal Procedure Code (Act V of 1898) s. 145.

There is jurisdiction under s. 145 of the Criminal Procedure Code, to make an order in favour of a person who claims to be in possession of the disputed land, as agent to, or manager for, the proprietors when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court.

Jhabu Singh v. *Rutherford* (1) overruled.

Newaz Ali v. *Ram Ballabh Chakravarti* (2) and *Brown* v. *Prithiraj Mandal* (3) distinguished.

CRIMINAL REFERENCE to Full Bench by HARINGTON and BRETT JJ.

ON the 3rd November 1902 one Bhagwan Dutt Chowdhry, a servant of the Rewani indigo factory, filed a petition before the Sub-divisional Magistrate of Samastipur, alleging that there were some lands in the village of Patpara which were in possession of the factory, and that the *maliks* of Patpara were trying to take possession of these lands. He asked the Magistrate to direct the police to take action in the matter. The Magistrate thereupon ordered a police inquiry. On the 19th November 1902 the police submitted a report to the effect that the manager and the *tokedar* of the Rewani factory as representing the interest of the proprietors of the factory on the one side, and Dhondhai Singh on the other, were the disputing parties, that the lands in dispute appeared to be in possession of the factory; and the police further submitted that proceedings should be taken under s. 145 of the Criminal Procedure Code to prevent a breach of the peace.

* Reference to Full Bench in Criminal Revision No. 172 of 1903.

(1) (1902) 7 C.W.N. 208. (2) (1893) I. L. R. 21 Cal. 916 (note).
(3) (1897) I. L. R. 25 Calc. 423.

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On the 27th November 1902, proceedings under s. 145 of the Code were drawn up and orders were issued calling on Mr. Follet as manager of the Rewani factory, as the first party, and Dhondhai Singh, as the second party, to file their written statements and documentary evidence as to the possession of the disputed lands. A written statement was filed on behalf of the first party alleging that the lands were in possession of the Rewani factory. The second party also filed a written statement alleging that he could not understand what lands were referred to in the proceedings.

On the 23rd December 1902 the police were ordered to investigate and report, and on receipt of their report ascertaining the lands, an order was passed by the Magistrate declaring Mr. Follet, manager of the Rewani factory, to be in possession of the lands in dispute.

The second party then applied to the High Court, and obtained a Rule calling on the District Magistrate of Darbhanga to shew cause why the order should not be set aside on the ground, *inter alia*, that there was no jurisdiction to make an order under s. 145 of the Code, in favour of a person who was manager and not proprietor of the lands in dispute. On the Rule coming on for hearing before HARINGTON and BRETT JJ., it was contended in support of the Rule, on the authority of *Jhabu Singh* v. *Rutherford* (1), that there was no jurisdiction to make the order in favour of the manager of the Rewani factory. Against the Rule it was contended that the proposition laid down in *Jhabu Singh* v. *Rutherford* (1) was not warranted by law. Their Lordships being of an opinion contrary to that laid down in the case of *Jhabu Singh* v. *Rutherford*(1) referred the matter to a Full Bench in the following terms :—

"The question arising in this case is whether there is jurisdiction under section 145 of the Criminal Procedure Code, to make an order in favour of Mr. Follet who alleges that he is in possession of the lands in dispute as manager of the Rewani factory on behalf of Mr. Mackenzie, the executor to the will of Mr. G. S. Lewellin, deceased, whose widow, the proprietress of the factory, is now resident in England.

The facts of the case are that under the direction of the Sub-divisional Officer of Somastipur, based on a petition of Bhagwan Dutt Chowdhry, *tokedar* of the Rewani factory, a Police Inspector visited Patpara and investigated the possession

(1) (1902) 7 C. W. N. 205.

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of lands, as to which there was said to be a dispute. He submitted a report to the effect that the manager and the *tokedar* of the Rewani factory as representing the interests of the proprietors of the factory, on the one side, and Dhondhai Singh on the other, were the disputing parties—and that the land in dispute appeared to be in possession of the factory—and that proceedings should be taken under section 145 of the Criminal Procedure Code, to prevent a breach of the peace between the parties. Proceedings were drawn up and orders were issued calling on Mr. G. R. Follet (as manager of the Rowani factory) as 1st party, and Dhondhai Singh as 2nd party, to file their written statements and documentary evidence as to the possession of the land mentioned in the police report. A written statement was filed on behalf of the 1st party by Bhagwan Dutt Chowdhry, the *tokedar* of the factory, alleging that the land was in possession of the Rowani factory.

A written statement was also filed by the 2nd party, and in it he alleged that he could not understand what lands were referred to in the proceedings. Accordingly the Police were ordered to investigate and report, and on receipt of their report ascertaining the lands, an order was passed by the Sub-divisional Officer at Somastipur, declaring Mr. Follet, manager of the Rowani factory, 1st party, to be in possession of the lands in dispute and to be entitled to retain possession, until legally evicted. An application was then made to this Court in revision.

A Rule was granted calling on the District Magistrate of Darbhanga to shew cause why the said order should not be set aside on the ground, amongst others, that there was no jurisdiction to make an order under section 145 of the Criminal Procedure Code, in favour of a person who was manager and not the proprietor of the land in question.

In support of the Rule it was contended on the authority of *Jhabu Singh* v. *Rutherford* (1) that there was no jurisdiction to make an order in favour of Mr. Follet, the manager of the Rewani factory.

On the other hand, it was contended that the proposition laid down in *Jhabu Singh* v. *Rutherford* (1) that there was no jurisdiction under section 145 to make an order in favour of any one, except the actual proprietors of the land, was not warranted by law.

It was pointed out that to limit the meaning of the word "possession" in sub-section 6 to "possession as proprietor" would be to render the Act unworkable when the proprietors were absentees, and were unaware of the existence of any dispute between their manager and other persons with regard to their lands.

In our opinion the Magistrate had jurisdiction to make an order in favour of a person, whom he finds to be in actual possession of disputed land, notwithstanding that the person in question only claims to be in possession, as representing the proprietors of the land; but inasmuch as *Jhabu Singh* v. *Rutherford's*(1) case is an authority for the contrary, we have thought it right to refer the following question to a Full Bench:—

Is there jurisdiction under section 145 of the Criminal Procedure Code, to make an order in favour of a person who claims to be in possession of the disputed land, as agent to, or manager for, the proprietors when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court?"

(1) (1902) 7 C. W. N. 208.

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Babu Dasarathi Sanyal (*Babu Amarendra Nath Bose* with him) for the petitioner. The question for your Lordships' decision in this reference is,—whether the possession of a manager is the kind of possession contemplated in cls. (*i*) and (*iv*) of s. 145 of the Criminal Procedure Code. The case of *Jhabu Singh* v. *Rutherford*(1) was, I submit, correctly decided. Possession means actual juridical possession, and not the possession through a manager, who has no interest except as such, or possession except as representing the company: see *Behary Lall Trigunait* v. *Darby*(2). The order in that case was made in favour of Mr. Darby, who was the manager of the Jheria and Katras Coal Company. That order was set aside by PETHERAM C.J. and RAMPINI J., on the ground that Mr. Darby had no interest except as a manager, his possession not being the kind of possession contemplated by s. 145; and that the proprietors who were the parties interested were not before the Court. The cases of *Newaz Ali* v. *Ram Ballabh Chakravarti*(3) referred to in the footnote of that case, and *Broun* v. *Prithiraj Mandal*(4) decided by HILL and WILKINS JJ. also support my contention. These cases were not considered by the Full Bench in *Krishna Kamini* v. *Abdul Jubbar*(5). The manager has no actual juridical possession. A servant or a bailiff occupying land or buildings in a ministerial character does not acquire possession: Pollock and Wright on Possession, p. 56. The word "possession" in s. 145 of the Code has, I submit, the same meaning as the word "possession" in s. 9 of the Specific Relief Act, namely, actual *juridical* possession: see *Nritto Lall Mitter* v. *Rajendro Narain Deb*(6). The words "evicted therefrom in due course of law" as also the language of Article 47 of the Limitation Act of 1877 are in favour of my contention. If an order under s. 155 of the Code is made in favour of a manager, he cannot be sued in a Civil Court, because the action has to be brought against the proprietor. The view I am contending for was adopted in several decisions under the earlier Codes: *Sutherland* v. *Crowdy*(7) and *Jitbahan* v.

(1) (1902) 7 C. W. N. 208.
(2) (1894) I. L. R. 21 Calc. 915.
(3) (1893) I. L. R. 21 Calc. 916 (note).
(4) (1897) I. L. R. 25 Calc. 423.
(5) (1902) I. L. R. 30 Calc. 155.
(6) (1895) I. L. R. 22 Calc. 562.
(7) (1872) 18 W. R. Cr. 11.

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Bansrup Dhobi (1). The words in s. 318 of the Code of 1861 and s. 530 of the Code of 1872, so far as they affect the present question, are the same as in the present Code. Under s. 147 of the present Code, relating to disputes concerning easements, which is analogous to s. 145, it has been held that the proper parties to the proceedings were the persons claiming a proprietary interest, and that the manager of a coal syndicate against whom an order was made and who was not shown to have had any interest in the land upon which the disputed right of way was claimed, was not a proper party to such proceedings: *Millar* v. *Rajendra Nath Chowdhry* (2) and *Bathoo Lal* v. *Domi Lal* (3). Suppose a final order under s. 145 were made against a manager, the proprietor could easily evade such order by appointing another manager in place of the one against whom the order was made. For the above reasons, it is submitted that the possession of a manager is not the kind of possession contemplated by s. 145 of the Code, and that the question referred to the Full Bench should be answered in the negative.

Babu Rajendra Nath Bose for the opposite party was not called upon.

MACLEAN C.J. In my opinion the question referred to us ought to be answered in the affirmative. I think there is jurisdiction in the Court under section 145 of the Code of Criminal Procedure to make an order in favour of a person who claims to be in possession of the disputed land, as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court. Under sub-section (i) of section 145, a Magistrate, when satisfied that there is a dispute likely to cause a breach of the peace, can require the parties concerned in such dispute to attend his Court. The first question to my mind is whether an agent or manager of the proprietors is a party concerned in the dispute or whether such description can apply only to the proprietor himself. If he is a manager, as here, for a proprietor, who is a resident outside

(1) (1880) 6 C. L. R. 193. (2) (1898) 2 C. W. N. 670.

(3) (1894) I. L. R. 21 Calc. 727.

British India, it seems to me very difficult to say that he is not one of the parties concerned in the dispute, and the contrary has not been seriously contended for by the learned vakil for the petitioner. If this be so, the Court then has to decide under sub-section (iv), without reference to the merits of the claim to the right to possess, which of the parties—that must be parties concerned in the dispute—was, at the date of the order, in such possession. "Such possession" must mean the actual possession referred to in sub-section (i), and there is nothing in the section to indicate that it can only be the possession as proprietor. It is the actual possession of the parties concerned in the dispute: the Court has to decide which of the parties concerned in the dispute was in actual possession at the date of the order.

Again, under sub-section (vi) if the Magistrate decides that one of the parties concerned in the dispute was then in possession, he shall issue an order declaring such party to be entitled to possession. In this view and there being nothing in the section about possession as proprietor the Magistrate had jurisdiction to deal with the case.

No doubt, the case of *Jhabu Singh* v. *Rutherford*(1) is an authority to the contrary, but, speaking with every respect to the view there expressed, I think on a careful consideration of the language of the section, it is difficult to sustain that view.

As regards the cases of *Newaz Ali* v. *Ram Ballabh Chakravorti* (2) and *Brown* v. *Prithiraj Mandal*(3), I do not find, in either of those cases, that the Court said that there is no jurisdiction in the Court to deal with a case such as the present. The case of *Brown* v. *Prithiraj Mandal*(3), only decided that a person who is in possession of land merely as manager for the actual proprietor should not be made a party to the proceedings under section 145, when the circumstances are such that the proprietor himself can readily be made a party. I do not see that, in any of these cases, any reference was made to the question of jurisdiction; and that is the only question we have to decide now.

I may point out that, if the argument of the petitioner were to prevail in the case of a proprietor resident out of British

(1) (1902) 7 C. W. N. 208. (2) (1893) I. L. R. 21 Calc. 916 (note).
(3) (1897) I. L. R. 25 Calc. 423.

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India, the property being managed by a manager, a not uncommon case, perhaps, inasmuch as there is no provision in the Code for the service of proceedings under section 145 upon a person resident out of British India, the section would become inoperative.

The Court in my opinion had jurisdiction, and the question referred to us must be answered in the way I have indicated. The case will be sent back to the Criminal Bench with this indication of our opinion.

BANERJEE J. I am of the same opinion. The question referred to us for our determination is, 'Is there jurisdiction under section 145 of the Criminal Procedure Code to make an order in favour of a person who claims to be in possession of the disputed land as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the Appellate Jurisdiction of the High Court?' Section 145 of the Code of Criminal Procedure provides that 'whenever a District Magistrate, Sub-divisional Magistrate or a Magistrate of the first class is satisfied that a dispute likely to cause a breach of the peace exists concerning any land.' I am quoting only so much of the section as bears upon this case—'within the local limits of his jurisdiction, he shall make an order in writing stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court' and 'to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.' That is sub-section (i) of the section. Then in sub-section (iv) it is provided that "the Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties was at the date of the order before mentioned in such possession of the said subject." Now, can it be said that an agent to, or a manager for, the proprietors of any disputed land, when the actual proprietors are not residents within the Appellate

Jurisdiction of the High Court, is not a person concerned in the dispute relating to the land? He is certainly one of the persons concerned in, and, perhaps, actually engaged in the dispute. Therefore, whether the words 'the parties concerned in such dispute' are to have a narrow or a broad meaning attached to them, upon any view it must be conceded that and an agent to, or a manager for, absentee proprietors comes within the description.

Then sub-section (iv) by excluding from consideration the merits of the claims of any party to a right to possess, and, confining the consideration of the Magistrate only to the question of actual possession, shows by implication that a Magistrate by making an order in favour of an agent to or a manager for absentee proprietors does not really go very far away from the scope of the section.

The learned vakil for the petitioner referred to certain inconveniences that might result from an omission to make those persons parties, who are or claim to be in possession as proprietors. Granting for the moment that such inconveniences might in certain cases arise, would that show that the Magistrate in making an order in favour of a person, as an agent to or a manager for absentee proprietors, has acted without jurisdication? It seems to me to be clear that that question must be answered in the negative. At best it would be an error of law on the part of the Magistrate, which does not affect his jurisdiction. Therefore, there is nothing in section 145 which would warrant our holding that the Magistrate making an order of the kind contemplated in the question referred to us acts without jurisdiction.

I may add that the inconveniences referred to will not be very great when the order describing the party as agent to or manager for another party informs the opposite party who the actual proprietor is and when suing for setting aside the order under section 145, the opposite party will know whom to sue.

A passage was cited from Pollock on Possession at page 56, to the effect that a servant or bailiff, or any person occupying land or buildings in a merely ministerial character does not acquire possession. That is a very qualified statement. The possession of an agent to, or a manager for, an absentee proprietor is not in any way similar to that of a servant or a bailiff or any person occupying land or buildings in a merely ministerial character.

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With regard to the cases cited, I have nothing to add to the observations that have fallen from the learned Chief Justice.

For the foregoing reasons I agree with the learned Chief Justice in thinking that the question referred to us should be answered in the affirmative.

HARINGTON J. I agree that the question referred to us should be answered in the affirmative. It appears to me that if it be established in fact that the manager is concerned in a dispute likely to cause a breach of the peace, and that that dispute relates to a property as described in section 145, then there is jurisdiction in the Magistrate to make an order either against him or in his favour as the case may be in respect of the actual possession which he claims. I do not think that any difficulty would be created in subsequent civil proceedings, because the claim of the manager is only expressed to be as that of the manager for the actual proprietor. The plaintiff, therefore, in an action for ejectment would not be misled as to whom he had to make the defendant to the suit that he intended to bring. I agree, therefore, in thinking that there was jurisdiction in the Magistrate to make the order which is complained of in the case.

PRATT J. I also agree with the learned Chief Justice in thinking that the question referred to us should be answered in the affirmative.

HENDERSON J. I also agree in answering the question referred to us in the affirmative. In my opinion, although the possession of the agent or manager of an absentee proprietor is not the possession of the proprietor, yet his possession is such possession as is contemplated by section 145 of the Criminal Procedure Code. If that be so, an order made under that section in his favour directing him to be retained in possession cannot be said to be without jurisdiction.

[The question raised in the case having been answered by the Full Bench in the affirmative, the Rule was subsequently discharged by HARINGTON and BRETT JJ.]

Rule discharged.

D. S.