

We desire to add that no arguments were addressed to us upon the question of the possible effect of the doctrine of acquiescence upon the position of the plaintiff who has accepted rent from the tenants for sixteen years after his purchase; nor was there any discussion at the Bar as to how far the tenants as occupancy raiyats might be protected under the Bengal Tenancy Act. Our judgment, therefore, must not be regarded as a decision upon either of these questions, or as an approval by implication of the principle laid down in *Jogeshwar Mazumdar v. Abed Mahomed Sirkar* (1).

The result is that these Rules must be discharged with costs.

s. a.

*Rules discharged.*

(1) (1896) 3 C. W. N., 13.

## CRIMINAL REVISION.

*Before Mr. Justice Stephen and Mr. Justice Carnduff.*

AMBLER

*v.*

SAMI AHMED.\*

*Dispute concerning land—Attachment of subject of dispute—Order of Settlement Court in a proceeding between the same parties and relating to the attached lands—Effect of such order—Release of attachment by Magistrate—Criminal Procedure Code (Act V of 1898), s. 146—Bengal Survey Act (Beng. Act V of 1875), s. 41.*

An order of the Survey and Settlement Courts, under the Bengal Survey Act, 1875, section 41, is a determination by a competent Court of the rights of the parties entitled to possession of the land within the meaning of section 146 of the Criminal Procedure Code.

Where the Magistrate attached certain lands under section 146 of the Code, and in a proceeding under section 41 of the Bengal Survey Act, 1875, between the same parties, the same lands were found to be in the possession of the petitioner:—

*Held*, that the Magistrate was bound to follow such order and to release the lands from attachment.

The petitioner, C. T. Ambler, junior, claimed to hold certain plots of land in mouzas Birozepur and Khudiban as a

\*Criminal Revision No. 1453 of 1909, against the order of H. F. Samman, District Magistrate of Monghyr, dated Aug. 31, 1909.

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raiyat. In 1907 a proceeding under section 145 of the Criminal Procedure Code was drawn up by Babu Shama Charan Mitter, Deputy Magistrate of Monghyr, making the petitioner the first party, and the proprietors of the two mouzas and some rival raiyats, the second party. Shah Sami Ahmed, who was one of the second party, was the sole proprietor of Khudiban and joint proprietor of Birozpur. By his order, dated the 14th October 1907, the Deputy Magistrate declared the petitioner to be in possession of 81 bighas of the disputed land and attached the rest, measuring about 129 bighas, under section 146 of the Code.

In a survey and settlement proceeding under the Bengal Survey Act (Bengal Act V of 1875), arising out of a dispute between Shah Sami Ahmed and the other co-owners of mouza Birozpur as to the boundaries of Birozpur and Khudiban, the petitioner being a party thereto, Babu Khetra Mohan Mookerjee, Assistant Superintendent of Survey, found, by his order of the 29th March 1908, that about 100 bighas of the attached lands fell within Birozpur and the rest in Khudiban, but that the petitioner was in possession of the whole of these lands as a tenant. The order was confirmed by Mr. Hubbock, the Senior Assistant Superintendent of Survey, and upheld on appeal by Mr. Murphy, the Superintendent of Survey. On the 16th July the petitioner was, in accordance with the order, recorded as *kaimi* raiyat in the settlement *khatians* of both the mouzas. The portion of the attached lands within Khudiban was further, in a proceeding under section 103A of the Bengal Tenancy Act (VIII of 1885), found by Babu Lakhmi Misser, Assistant Settlement Officer, on the 27th September 1909, to be in the possession of the petitioner as a raiyat under the proprietor of Khudiban.

The petitioner applied to the Joint Magistrate, the officer in charge, for withdrawal of the attachment, and the Magistrate, after notice to all the members of the second party in the original case under section 145, directed by his order, dated the 26th July 1909, the release of the attachment and declared the possession of the petitioner as found by the Survey and

Settlement Courts ; but the District Magistrate, on the 31st August 1909, revoked the Joint Magistrate's order in the following terms :—

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The decision in the Survey and Settlement proceedings was under the Survey Act, that is, according to possession, and does not amount to a determination by a competent Court of the rights of the parties to the lands in question. Let the lands remain under attachment.

The petitioner then moved the High Court and obtained the present Rule.

*Mr. P. L. Roy* (with him *Babu Naresh Chandra Sinha*), for the petitioners. The order of the Survey authorities has, under section 41 of the Bengal Survey Act, 1875, the force of an order of any Civil Court declaring the rights of the parties to the disputed lands and the possession thereof, and the Magistrate was, therefore, bound to release the attachment. Relies also on the proceedings under section 103A of the Bengal Tenancy Act.

STEPHEN AND CARNDUFF, JJ. In this case the land was attached by the Magistrate under section 146 of the Criminal Procedure Code. Subsequently the petitioner obtained an order in his favour from the hands of the Survey authorities under section 41 of the Bengal Survey Act, 1875. He now applies to have the attachment released in his favour, and he is entitled to have it so released, because the order of the Collector as to the land under the Survey Act is a determination by a competent Court of the rights of the person entitled to possession thereof. It is also a determination of the rights of the parties to the original dispute, since the two parties in the original dispute were both before the Survey Court. An order has also been made under the Bengal Tenancy Act, the effect of which we need not notice, as the order under the Survey Act has the force of an order of a Civil Court. The rule, therefore, is made absolute, the order in question is set aside, and the attachment must be released in favour of the petitioner.

*Rule absolute.*