

under section 167 of the Bengal Tenancy Act, and this has not been done in this case.

Under these circumstances although we set aside the judgment of the Court below, we confirm the decree of the said Court but without costs in either Court.

S. M.

1911

BANBIHARI
KAPUR
v.
KHETRA PAL
SINGH ROY.

CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Sharfuddin.

JOYMANGAL PERSHAD NARAIN SINGH

v.

JHAGROO SAHU.*

1911

July 17.

Criminal Revision—Practice—Jurisdiction of High Court—Rule issued on one or more of several grounds in a petition, and ultimately discharged—Fresh Rule on the other grounds of the same petition.

When a rule has been granted on one or more of several grounds contained in a petition and is ultimately discharged, the High Court has no jurisdiction to issue a fresh rule, in the same case, on the other or some of the other grounds of the petition, which were considered on the first occasion, unless permission was given to the party, at the time of the discharge of the first rule, to renew the application on the other grounds or some of them.

Rai Radha Gobind v. Gossain Mohendra Gir (1) and Bibhuty Mohan Itoy v. Dasimoni Dassi (2) referred to.

On 5th September 1910, a proceeding under s. 145 of the Criminal Procedure Code, was drawn up by Babu P. N. Mookjee, Deputy Magistrate of Hazaribagh, against Jhagroo Sahu, as first party, and the petitioner, Raja Joymangal Pershad Narain Singh and others, as second party, in supersession of a previous proceeding under s. 144 of the Code based on a petition by the first party. On the 30th November, Babu H. P. Ghose, another Deputy Magistrate, took the case on his own file, and after taking evidence declared the first party to be in possession, by his order dated the 13th February

* Criminal Revision, No. 546 of 1911, against the order of Haripada Ghose, Deputy Magistrate of Hazaribagh, dated Feb. 13, 1911.

(1) (1901) 6 C. W. N. 340.

(2) (1902) 10 C. L. J. 80, 82.

1911

JOYMANGAL
PERSHAD
NARAIN
SINGH
v.
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SAHU.

1911. The second party thereupon filed a petition, by way of motion, containing the following among other grounds:—

(i) That a proceeding having been initiated only on the allegation of the first party, and there being nothing beyond the bare statement of the said party to show the existence of a likelihood of a breach of the peace, the Deputy Magistrate acted without jurisdiction in initiating the proceedings.

(ii) That Babu H. P. Ghose had no jurisdiction to remove the case from the file of the Magistrate who had initiated the proceedings.

(iv) That the Magistrate having considered, at length, the merits of the claims of the parties, found that the possession of the first party was precarious, and that he was in possession immediately before the dispute, but that he did not find which party was in possession at the date of the dispute or within two months immediately preceding.

The High Court (Holmwood and Sharfuddin JJ.) issued a Rule only on the ground relating to the jurisdiction of Babu H. P. Ghose to remove the case from the file of the first Magistrate. The Rule was discharged, on 12th May 1911, by Caspersz and Sharfuddin JJ. The petitioner again moved the Court for a fresh Rule on the same facts and the same grounds, other than that on which the first Rule had been issued, and their Lordships (Caspersz and Sharfuddin JJ.) granted a Rule, on the 1st and 4th grounds set forth above, by their order dated the 15th May 1911.

Mr. A. Sharfuddin and Moulvi Enayet Kareem, for the petitioner.

Mr. K. N. Chaudhuri and Babu Lalit Mohan Mukerjee, for the opposite party.

CASPERSZ AND SHARFUDDIN JJ. On the 12th May 1911, this Court discharged a Rule obtained (by the petitioner) upon the sole ground whether a certain Deputy Magistrate had jurisdiction to remove a case from the file of another Deputy Magistrate. Other grounds had been taken in that application, but this Court (Holmwood and Sharfuddin JJ.) gave a Rule on the one ground only. Nothing was said, in this Court's judgment, as to whether the petitioner had the Court's permission to renew his application on the other grounds on which that Rule had not been issued.

On the 15th May 1911, we granted another Rule upon the first and fourth grounds specified, which had reference to

matters other than the question of jurisdiction of one Deputy Magistrate to transfer proceedings from the file of another Magistrate. These grounds go much deeper into the merits of the controversy between the parties, and, undoubtedly, challenge the jurisdiction of the Deputy Magistrate to pass an order declaring the opposite party to be in possession of the property in dispute.

On the Rule coming on for hearing, the learned counsel for the opposite party contended that this Court had no jurisdiction to grant a fresh Rule when, upon the previous occasion, the whole matter was before the Court and a Rule was granted on one only of the several grounds. We think this contention is well-founded.

The first case relied upon, *Rai Radha Gobind v. Gossain Mohendra Gir* (1), may, perhaps, be distinguished in one respect, that is to say, the two Rules granted in that case, one after another, were in similar terms. In that case, however, the petitioner obtained liberty to apply for another Rule if so advised, and so the authority is in point, because the present petitioner never applied for, nor obtained permission to ask for another Rule. The other case cited to us, *Bibhutty Mohan Roy v. Dasimoni Dassi* (2), dealt with a case that had not been heard and determined on the merits. In such a case the Court has power to re-open, and dispose of, the matter; but it cannot be said, in the present instance, that the first Rule was not decided on the merits. The points selected by this Court, for hearing and determination, was the one point we have mentioned and that Rule was disposed of on that particular question. The second authority cited to us is, undoubtedly, in favour of the contention of the opposite party.

We understand that, as a matter of practice, when a Rule is issued by this Court on one or more selected grounds, no further application can be granted on the remaining grounds not so selected. We think this is a salutary practice and one to be followed on principle as well. The preliminary objection prevails. The rule is discharged.

E. H. C. M.

Rule discharged.

(1) (1901) 6 C. W. N. 340.

(2) (1902) 10 C. L. J. 80, 82.

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