

CRIMINAL REVISION.

Before Mr. Justice Caspersz and Mr. Justice Sharfuldin.

GURU DAS KUNDU CHOWDHRY

v.

KEDAR NATH KUNDU CHOWDHRY.*

1911

June 27.

Dispute concerning land—Joint-owners—Claim of exclusive possession to subject of dispute, by each party—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898) s. 145.

A dispute between two sets of joint-owners, each claiming exclusive possession of the land forming part of the joint estate, through their respective tenants, is within the scope of s. 145 of the Criminal Procedure Code. An order declaring the exclusive possession of a tenant of one party is not, therefore, without jurisdiction.

Makhan Lal Roy v. Barada Kanta Roy (1) distinguished.

UPON the receipt of a police report, dated the 4th February 1911, alleging the existence of a dispute likely to cause a breach of the peace between Fakir Chand Kanrar of the one party, and Sirish Chunder Bose and Nolini Behari Chatterjee of the other, regarding a plot of land measuring six cottahs in Mouza Radhadasi, Babu Khagendra Nath Mitter, Deputy Magistrate of Howrah, called upon them to show cause why they should not be bound down to keep the peace. On the 16th February proceedings under s. 145 of the Code were drawn up against the said persons as also against Roy Kedar Nath Kundu Chowdhry and one Charu Chunder Srimani, and afterwards others, including the rival Kundu Chowdhries, were added as parties.

The Kundu Chowdhries of both parties and Srimati Sarala Dasi were admittedly the proprietors of the estate to which Mouza Radhadasi appertained, and the former purchased at a Civil Court sale the tenant's interest in 32 bighas

* Criminal Revision, No. 578 of 1911, against the order of Khagendra Nath Mitter, Deputy Magistrate of Howrah, dated April 25, 1911.

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of land situated in Radhadasi, of which the disputed plot was a part. It appeared that some of the plots comprised in the above area were in the exclusive possession of the Kundu Chowdhries of each party either *khas* or through their respective tenants. Each party of the joint proprietors claimed exclusive possession of the disputed land through such tenants. In the present proceedings Roy Kedarnath and others including his tenant, Fakir Chand, were made the first party; and Guru Das Kundu and others, including Sarala Dasi, the second party. Immediately south of this land there was a soorkey mill belonging to Roy Kedarnath, which ceased work over eight or nine years ago. Fakir Chand purchased the mill in May or June 1910, and obtained a lease of the land covered by it in September 1910. The land to the north of the disputed plot belonged to the Kundu Chowdhries of the second party and was used formerly as brick fields. At that time Charu Chunder Srimani, the son-in-law of one of them, made bricks there, but held no deed in respect of the land. In July 1910, he executed a kabuliat in favour of the second party Kundus to take effect from the middle of November 1901. On the 9th January 1911, Charu Chunder sold his leasehold to Sirish Chunder Bose and Nolin Behari Chatterjee of the second party, and a dispute then arose between these latter two and Fakir Chand regarding the plot of six cottahs, and each of them claimed to be in exclusive possession of the same. After taking evidence the Deputy Magistrate found Fakir Chand to be in such possession of the land. The petitioners, the second party, then moved the High Court, and obtained the present Rule.

Mr. A. Chaudhuri, Babu Boidya Nath Dutt and Babu Manmohan Dutt, for the petitioners.

Mr. A. Caspersz, Babu Hara Kumar Mittra and Babu Ajit Ghose, for the first party.

CASPERSZ AND SHARFUDDIN JJ. The land in dispute is six cottahs out of an area of 32 bighas. So far as the finding under section 145 of the Criminal Procedure Code is con-

cerned, it is clear that the land is in the possession of the first party, Fakir Chand Kanrar, the tenant of the same. But the question remains whether the Deputy Magistrate had jurisdiction to proceed and pass an order under the section. It is urged on behalf of the petitioners that the dispute involved the joint co-sharers who were brought on the record, and that, in accordance with the rulings of this Court, the Deputy Magistrate should have refrained from exercising jurisdiction in the matter. It appears to us, however, that the order passed in favour of one tenant, as against the other persons setting up their tenancy, was a good and valid order which does not transgress the principle applied in *Makhan Lal Roy v. Barada Kanta Roy* (1). The case here is one of exclusive possession claimed by each set of landlords through their respective tenants. The landlords of the tenant in possession can recover the entire rent from Fakir Chand Kanrar according to his lease. The presence of the rival tenants was necessary: see *Laldhari Singh v. Sukdeo Narain Singh* (2). The Rule is discharged.

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Rule discharged.

(1) (1906) 11 C. W. N. 512.

(2) (1900) I. L. R. 27 Calc. 892.