Sheobalak Rai Vs. Bhagwat Pandey

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Court : Kolkata

Decided On : Jun-07-1912

Reported in : (1913)ILR40Cal105

Judge : Holmwood and ;Imam, JJ.

Appellant : Sheobalak Rai

Respondent : Bhagwat Pandey

Judgement :

Holmwood and Imam, JJ.

1. This was a Rule calling on the District Magistrate of Shahabad to show cause why the order under Section 116 of the Criminal Procedure Code should not be set aside as wholly without jurisdiction, inasmuch as the Magistrate had not taken any evidence as was necessary in order to enable him to determine, if possible, who was in possession.

2. Now, as regards the duties of the Magistrate under Section 146, it was laid down in the case of Mansar Ali v. Matiullah (1908) 12 C. W. N. 896 that the Magistrate in the absence of information might have himself held a local enquiry under Section 148 or in various ways might have informed himself as to the facts of the case; as lie had not done so it was held that he declined jurisdiction and the order complained of was set aside. This ruling has been followed by this Court in the experience of one of us who has been sitting upon this Bench for the greater part of two years, and has never as far as we know been differed from. There is a ruling in the case of Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty (1909) 14 C. W. N. 80 in which the learned Judges profess to distinguish the ruling in Mansar Ali v. Matiullah (1) on the ground that the Judges set aside the order in that case because the Magistrate did not give sufficient time for regular proceedings to be followed. But as we have just pointed out that was only one ground and a minor ground for setting aside the order. The main ground was the ground we have just now cited and that ground appears to us to be an obviously good ground; for the law says that it is only if the Magistrate decides that none of the parties was then in such possession or is unable to satisfy himself as to which of them was in such possession, he can attach the property, and it is perfectly clear that he cannot say he is unable to satisfy himself if he has never made the slightest effort to do so. He had only to send a Kanungoe out to the spot and take his report, or send for the headman of the village arid ask him what the facts were; he would have then fully armed himself with jurisdiction, but he did-no tiling of the kind, and the case can be clearly distinguished from Bejoy Madhub Chowdhury v. Chandra Nath Chuckerbutty (1909) 14 C. W. N. 80 where the Magistrate said he was unable to satisfy himself. He does not even say that lie has had the slightest difficulty. His order

is as follows: 'No evidence produced by either side, lands attached under Section 146.' Whatever view, therefore, be taken of the rulings, that order is clearly incompetent and without jurisdiction.

3. The order must be set aside and the lands released from attachment.