

RAJARATHNA
NAIDU
v.
NARASIMHA
CHARIAR.

As we think the learned Judge was wrong in dismissing the suits on the ground taken by him, we must set aside his decrees and remand the cases to him for disposal on the other points in the cases.

Costs will abide the event.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Moore.

1904.
November
24, 28.

ALGARASAWMI TEVAN AND OTHERS (ACCUSED Nos. 1
AND 3 TO 13), PETITIONERS,

v.

EMPEROR, RESPONDENT.*

Indian Penal Code—Act XLV of 1860, s. 379—Theft—Dishonest taking—Bonâ fide claim of ownership by accused over property in possession of third party—Disputed ownership of land—Possession summarily taken by Revenue authorities—Province of Civil Courts to decide questions of ownership between Government and private persons.

The petitioner was convicted of theft of certain bamboos which he said he cut on his own puttah land, but which the prosecution alleged he cut on Government poramboke land adjacent to his own. Prior to his conviction, disputes had arisen between the Revenue authorities and the petitioner regarding the ownership of the land. The petitioner contended that he *bonâ fide* believed the bamboos to be his property at the time he cut and removed them. The Magistrate, finding that the Revenue authorities had taken possession of the land at the time the bamboos were removed convicted the petitioner :

Held, that the conviction was wrong. The questions to be considered were, (1) whether the bamboos did in fact belong to the petitioner or to Government ; (2) whether if they did not belong to the petitioner he *bonâ fide* believed they did.

It is the province of the Civil Courts to decide questions of ownership of land between Government and private parties, and if the Revenue authorities take summary possession of land as in the present case, they become mere trespassers and there is nothing dishonest in the owner taking possession of his own property.

* Criminal Revision Case No. 350 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of G. H. B. Jackson, Esq., Head Assistant Magistrate of Sattur Division, in Criminal Appeal No. 25 of 1904, presented against the judgment of Mr. S. S. William, Second-class Magistrate of Watrap, in Calendar Case No. 108 of 1904.

CHARGE of theft. The petitioner with several others was convicted by the Stationary Second-class Magistrate of theft under the following circumstances:—A petition was sent to the Revenue authorities stating that the petitioner was utilising bamboos growing on Government poramboke land. The karnam was accordingly directed to inspect the land, and he reported that certain clumps of bamboos bordering on the petitioner's land were in Government poramboke. The petitioner refused to be present at the karnam's inspection but was informed of its results. The Deputy Tahsildar, on receipt of the karnam's report, ordered the bamboo clumps to be watched on behalf of Government. The petitioner shortly afterwards presented a petition to the Collector, stating that the bamboos had been planted by his ancestors for a hedge and setting out the action taken by the authorities thereto. Upon this petition the Revenue Inspector made an inspection and informed the petitioner's servant that certain of the clumps were in Government poramboke. The prosecution alleged, that the petitioner, subsequent to the inspection by the Revenue Inspector, cut these bamboos, and the Revenue Inspector deposed that those clumps were cut which he had pointed out to the petitioner's servants as lying within Government poramboke. The petitioner contended that he was the lawful owner of the bamboos in question. On appeal, the Head Assistant Magistrate in disposing of the petitioner's contention said:—

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“ The appellants have devoted eight paragraphs of the appeal petition to urging that the first and second appellants are the lawful owners of the bamboos in question. They seem to forget that ownership has little to do with cases of theft, where possession only is the point at issue. Mr. Mayne in paragraph 506 of his 1901 edition has put the matter thus, “ it must not however be supposed that even a *bonâ fide* claim of right to property in the possession of another will always be sufficient answer to a charge of theft, if the right claimed cannot be fairly supposed to justify the mode in which it was exercised. If the property was in the possession of the prosecutor in such a way that he had a right to hold it against the prisoner, that is, that the petitioner could not get it without the consent of the prosecutor, then it would be theft if the prisoner dishonestly possessed himself of it with the intention of appropriating it.”

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The point can be proved by a *reductio ad absurdum*. If every one who believes that he has the right of ownership may take property from the possessor, there would be an end to all legal procedure and every one who could would help himself.

Therefore the facts that the appellant's grandfather planted the bamboos, that they are a hedge, that he has long enjoyment, or that the English maxim '*quicquid inaedificatur solo solo cedit*' finds no place in Indian Law (Madras, XXVII, 211) are all in my opinion beside the point. We want to know not that appellant can establish a right to the bamboos, but that he was in possession of them or thought that he was, when he removed them.

When the accredited officials of Government measure land according to the records and drive in pegs and announce that certain land is Government land and order that it shall be guarded as such and that the forest produce will be sold for Government. I hold that Government has taken possession of that land. Exhibit L show that first appellant shares my opinion. He details the steps taken by the authorities and begs the Collector that the bamboos, etc., may be in his possession as heretofore.

Were the bamboos, being moveable property in the possession of Government, taken dishonestly? Obviously the loss to Government and gain to the appellant is wrongful till a definite right is established by appellant. The fact that he may in the future establish such right does not effect the dishonesty of a removal without the right."

The petitioner filed this criminal revision petition.

R. Subrahmaniam Ayyar for petitioners.

Public Prosecutor in support of the conviction.

ORDER.—The first petitioner has been convicted of theft of certain bamboos which he says he cut on his own patta land, but which the prosecution alleges he cut on Government poramboke land adjacent to his own patta land.

The first petitioner has claimed a right to these bamboos for a long time past. He says that his grandfather planted them as a hedge and that he has long been enjoying them. The Revenue authorities, however, do not admit the claim. Revenue officers recently measured the lands, and being of opinion that the bamboos claimed by the first petitioner were within the limits of the Government poramboke took possession of the land and informed

the first petitioner that they had done so. The first petitioner, however, after this cut and removed some of the bamboos alleging that they belonged to him. Such being the facts, it is obvious that the first petitioner could not be guilty of theft if the bamboos were really his own property for he would be entitled to take them and his act would not be dishonest; nor would his act be dishonest if he *bonâ fide* believed them to be his even though, in fact, they were not so. The Head Assistant Magistrate in paragraphs 10 to 15 of his judgment shows that he entirely misunderstands the law applicable to cases of this kind. He says that "ownership has little to do with cases of theft, where possession only is the point at issue" and "We want to know not that appellant can establish a right to the bamboos but that he was in possession of them, or thought that he was, when he removed them." The Head Assistant Magistrate found that the Revenue authorities had taken possession of the land, and, therefore confirmed the conviction without trying the question whether the bamboos belonged to the first petitioner or whether he *bonâ fide* believed that they did.

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The Head Assistant Magistrate evidently does not understand that the Revenue authorities have no right, as between themselves and the petitioner, to decide the question as to who is the owner of the land and the bamboos, nor have they any right to oust the first petitioner from possession. Their position in regard to these matters is the same as that of any private person. It is the province of the civil courts to decide questions of ownership of land between Government and private persons just as much as between two private claimants. If Government officers take summary possession of a man's land otherwise than under the Land Acquisition Act or other legal authority his rights are no more affected by such illegal action than they would be by the illegal seizure of his land by a private person. In such a case the Revenue officers are mere trespassers, and there is nothing dishonest in the owner retaking possession of his property.

The case quoted by the Head Assistant Magistrate from Mayne has no application to such a case as the present, for it presupposes that the offender has no present right to the possession of the property, (for example a man may be guilty of theft if he dishonestly and without the banker's consent takes his own valuable securities out of the possession of a banker who has a lien on them), but in the case before us if the bamboos

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belong to the first petitioner he has a present right to their immediate possession.

The chief questions then, are (1) whether the bamboos do, in fact, belong to the first petitioner or to Government; (2) whether, if they do not belong to the first petitioner he *bonâ fide* believed that they did. In regard to this the fact that his grandfather planted the trees, (if it be a fact) and that he long enjoyed the produce (if he did do so) would be matters of great importance from which to draw an inference as to his honesty. On the other hand, if these are not proved, and if the land is shown not to belong to him, then the fact that he knew that the Revenue authorities had decided against his claim after enquiry and examination of records and had warned him not to interfere with the bamboos would be important in judging of the *bona fides* of his alleged belief.

We set aside the order of the Head Assistant Magistrate confirming the conviction and we direct that the Head Assistant Magistrate to restore the appeal to his file and dispose of it a fresh in accordance with law. He will also reconsider in the light of our observations the petitioner's application for the admission of further evidence. The accused will remain on the same bail pending the disposal of the case by the Head Assistant Magistrate.

APPELLATE CRIMINAL.

Before Mr. Justice Boddam.

KAMATCHINATHAN CHETTY (ACCUSED), PETITIONER,

v.

EMPEROR (RESPONDENT).*

1904,
December 1.

Indian Penal Code—Act XLV of 1860, s. 193—Giving false evidence—Deposition of witness upon which assignment of perjury based not taken in manner required by law—Conviction—Unsustainability of.

A was convicted of giving false evidence in a judicial proceeding. It was proved that after his evidence had been recorded, his deposition upon which the

* Criminal Revision Case No. 368 of 1904, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the judgment of W. W. Phillips, Esq., Sessions Judge of Tinnevely, in Criminal Appeal No. 51 of 1904, presented against the conviction and sentence of E. W. Legh, Esq., Sub-Divisional First-class Magistrate, Tuticorin, in Calendar Case No. 55 of 1904,