

SHANMUGA
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v.
PALNATI
KURPU
CHETTY.

cases, there can be no doubt that under section 7 proceedings for the recovery of arrears of rent whether by a suit or by summary proceedings under the Act may be validly taken quite independently of sections 10 and 72 of the Act if the patta tendered to the tenant before the institution of a summary suit under section 9 was such as the tenant was bound to accept; if the same has been approved by the Collector under section 10 the landlord need not prove again in his suit or proceedings for the recovery of rent that the patta tendered by him was such as the tenant was bound to accept nor need he prove a further tender of patta after judgment.

I would therefore unhesitatingly answer the question referred to the Full Bench in the negative.

MOORE, J.—I concur. I have nothing to add to what has been set forth in the order of reference in Second Appeals Nos. 1095 and 1096 of 1900.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Boddam.

KING-EMPEROR

v.

AYYA ANNASAMY AIYAR AND NINE OTHERS ACCUSED.*

Indian Penal Code—Act XLV of 1860, s. 143—Unlawful assembly—Defence by accused persons of property in their possession.

Paddy belonging to a society, to which the first accused belonged, was stored in a granary in a street. It was found as a fact that this paddy had been in the possession of the first accused for some time prior to 5th November 1899, and was in his possession on that date. Complainant, on 5th November 1899, attempted, as treasurer of the society, to forcibly take possession of the paddy with his servants, whereupon all the accused resisted him, and maintained the possession of the first accused, some blows being struck. On a charge being preferred against the accused for rioting:

Held, that no offence had been committed.

* Criminal Revision Case No. 168 of 1901 under sections 435 and 439 of the Criminal Procedure Code, praying the High Court to revise the judgment of C. Hanumantha Row, First-class Sub-Divisional Magistrate of Tanjore division, in Calendar Case No. 8 of 1900.

CHARGE of rioting and theft against eighteen persons belonging to the village of Sulamangalam, Tanjore. The First-class Sub-Divisional Magistrate, before whom the accused were tried, discharged seven at an early stage of the case. The other eleven were convicted. The main facts of the case appear from the following judgment of the Sessions Judge at Tanjore, to whom the first accused, who was fined Rs. 100, preferred an appeal :—“ The theft is said to have been committed in respect of some paddy belonging to the Mahajana Sabha of the village to which the appellant belongs, and the rioting is said to have been committed when the complainant, who says he is the treasurer of the sabha, attempted to take possession of the paddy on 5th November 1899. The paddy was stored in the granary in the village street, and the Magistrate finds that the appellant, a member of the sabha, was in possession of it for some time before 5th November. There can be no doubt that this finding is correct. The evidence shows very clearly that, for some time before 5th November and on that date, the appellant was in possession and that he appointed two of his men to watch the paddy; one of his watchmen was at the place when the complainant went there and tried to take possession of the paddy. The ninth witness for the prosecution, one of the men who accompanied the complainant, says: ‘ Govindan (one of the two watchmen employed by the appellant) was at the receptacle when we went there. Govindan objected, but we did not listen to him. There was a big row between complainant and Govindan, hearing the noise of which, the other accused came.’ The complainant, in spite of Govindan’s remonstrances, climbed on to the top of the granary and opened it in order to take out the paddy. The appellant and others then arrived at the scene and the complainant was pulled down, and it is said that he received two blows. This, according to the evidence, is all that happened, and it appears to me that no offence was committed. The appellant, I consider, did no more than maintain his own possession, and use such force as was necessary to maintain it, and to resist the complainant’s attempt to deprive him of that possession. He did not commit or abet the commission of theft or rioting. The finding and sentence of the Magistrate are reversed and the appellant is acquitted. The fine will be refunded.” The complainant had, previously to the occurrence, sent a written notice to the first accused, in which he acknowledged that first accused was in possession of the paddy,

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and warned him that he would be held responsible for any damage that it might suffer. The Sabha had authorized the complainant to endeavour to remove the paddy peaceably, and directed him to resort to a Civil Court if he met with any resistance.

The remaining ten accused (who had been sentenced to pay fines of Rs. 25 and under) preferred this criminal revision petition against their conviction.

Mr. *D. Chamier*, for petitioners, contended that the conviction was wrong, as the accused had only defended their possession. The person, who had attempted to "enforce a right or supposed right," was the complainant, who, as treasurer to the Sabha, endeavoured to take possession of the paddy which was in the possession of the first accused. Complainant, in his letter to first accused, acknowledged the possession of the latter, and the Magistrate found it as a fact. Complainant had attempted to take the paddy and the accused had prevented him, that is, they had defended their possession. This was not an offence under section 143, sub-section 4 of the Indian Penal Code. The offence defined in that section was the enforcement of a right, or the taking possession of property, by means of criminal force. A construction of the section as including a defence of possession of property or of a right would be inconsistent with the right of private defence of property which is permitted in section 97 of the same code. He referred to High Court Ruling, 10th August 1869(1), and to *Shunker Singh v. Burmah Mahto*(2). The conviction for theft could not be supported, as the evidence did not show conclusively that any paddy had been in fact removed by the accused, and even if it was removed, there was no criminal intent, the object of removal being to protect their possession of it.

The Public Prosecutor (Mr. *E. B. Powell*), in support of the conviction, dealt with the facts and contended that the accused had been properly convicted.

JUDGMENT.—The First-class Sub-Divisional Magistrate found that the petitioners all acted in accordance with the directions of the first accused. He found that, before and at the time of the alleged offences, the first accused was in possession of the receptacle containing the paddy contributions and had appointed his own watchmen, two of whom are amongst the petitioners, and that the

(1) 4 M.H.C.R., App. 65.

(2) 23 W. R., (C.R.), 25.

complainant had sent a notice to the first accused, whereby he acknowledged the first accused's possession and stated that he would be held responsible for all damage. The Sabha only authorized the complainant to endeavour to remove the paddy peaceably and if he met with any resistance directed him to resort to a Civil Court. The complainant endeavoured to take possession of the paddy forcibly with his servants and the acts complained of were done by the first accused and the petitioners in resisting this attempt to take possession and in maintaining the possession of the first accused.

In the circumstances no offence was committed and the petitioners and the first accused should have been acquitted.

We set aside the convictions and acquit and discharge all the petitioners.

The fines, if paid, will be refunded.

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APPELLATE CRIMINAL.

Before Mr. Justice Davies and Mr. Justice Moore.

KING-EMPEROR (APPELLANT),

v.

ALEXANDER ALLAN (ACCUSED), RESPONDENT.*

1901,
August 7.
October 18.

Madras District Municipalities Act—Act IV of 1884, s. 63 (3)—Madras District Municipalities Amendment Act—Act III of 1897, s. 49—“Lands used solely for agricultural purposes”—Liability to tax.

By sub-section (3) of section 63 of the Madras District Municipalities Act, 1884, as amended by the Madras District Municipalities Amendment Act, 1897, lands used “solely for agricultural purposes” are exempted from the enhanced rates of taxation that may be imposed in certain cases under that sub-section:

Held, that lands on which potatoes, grain, vegetables, &c., are grown, as well as pasture lands, are used “solely for agricultural purposes” within the meaning of the sub-section.

APPEAL by the Public Prosecutor under section 417 of the Code of Criminal Procedure against an order of acquittal. The case had come before a Bench of Magistrates on a previous occasion when defendant was acquitted. An appeal was then preferred against

* Criminal appeal from an order of acquittal passed in Summary Case No. 348 of 1900 by a Bench of Magistrates at Ootacamund.