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RAM RATAN v. LALTA PRASAD.

Edge, C. J., Banerji, J.

could not give the Court at Moradabad any jurisdiction to entertain a suit relating to immovable property in the Tarái district.

We do not intend to decide the question of limitation, but we merely say this, that if the Court at Moradabad had jurisdiction to decree a sale of this property in the Tarái, this anomaly would arise; it might be that so far as the Court at Moradabad was concerned the limitation in that Court for a sale of property would, under art. 147 of sch. ii of Act No. XV of 1877, be sixty years, whereas if the suit had been brought in the Court of the Tarái district, the limitation would, by reason of rule 3 of Chapter I of the schedule of Regulation No. IV of 1876, be twelve years. We say we do not decide what would be the limitation applicable in the Court of Moradabad so far as it relates to the property in the Tarái. That is by no means an easy question, but we are not called on to decide it.

We decree this appeal in so far as the decree of the Court below was a decree for sale of the property in the Tarái and in so far as these appellants are concerned; and in so far as these defendants-appellants and the property in the Tarái are concerned, we dismiss the suit with costs.

Appeal decreed in part.

FULL BENCH.

1895
April 5.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Banerji and Mr. Justice Burkitt.

IN THE MATTER OF THE PETITION OF RAHMAT-ULLAH.

Magistrate of the District, powers of—Criminal Procedure Code, s. 144—Executive powers of Magistrate—Order which might have the effect of interfering with the execution of a decree of a Civil Court.

A District Magistrate has no power either under s. 144 of the Code of Civil Procedure or in his executive capacity to make an order for the re-building of a structure on private land which has fallen into disrepair or been pulled down, neither has he power to make any order which would have the direct effect of interfering with the execution of a decree of a Civil Court.

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THIS was a reference made by the Sessions Judge of Benares in respect of certain orders passed by the District Magistrate. The circumstances which gave rise to the passing of the orders in question are thus stated in the explanation tendered by the Magistrate:—

"The Lath Bhairon is a very famous place of worship for the Hindus and is one of the most sacred places in Benares * * * * * On one side of it there is a tank called Kapal Mochin which is held sacred by Hindus, and there is a house lately built for the *goshain* who lives there as permanent *pujari* and receives fees from pilgrims. Adjoining the famous Lath there is a mosque or *idgah*—an object of veneration by Muhammadans. Close to the tank and on both sides of the stairs leading to the mosque there were two dalans, which are called by the Hindus 'dharmsalas,' and '*baradaris*' by the Muhammadans. * * * * *

"In 1889 Nepal Nath, *goshain*, the former pujari, brought a suit against Haji Supan for possession of the whole of the land. He got a decree for only a small portion of the land, but not including that on which the Lath itself and the *dharmsalas* stand. * * * * *

"Last year (1894) the Muhammadans collected materials for building at the Lath. The Hindus in accordance with the old orders on the subject objected. It was then found that the *goshain* in charge had come to an agreement with the Muhammadans; the latter were to be allowed to repair their *farash* and the Hindus to build a wall round the Lath. * * * * *

"At last during the rains the Muhammadans, without any orders, removed the *baradaris*, thus causing great inconvenience and general excitement amongst the Hindus. * * * *"

The District Magistrate thereupon passed certain orders which may be thus summarised:—(1) The petitioner and others were ordered to rebuild at once the baradaris which they had dismantled; (2) Muhammadans were directed not to trespass in a certain house

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regarding which a complaint had been made on behalf of the Hindus interested in the premises in question; and (3) no party, Hindu or Muhammadan, holding a decree affecting any portion of property at this place was to be permitted to execute it without report to, and permission of, the District Magistrate.

Against these orders Rahmat-ullah and others applied in revision to the Sessions Judge, who, taking the view that the orders were *ultra vires* of the Magistrate referred the case to the High Court, as stated above.

Mr. *J. E. Howard* and Mr. *Amir-ud-din* for the applicants.

Mr. *E. A. Howard* for the opposite parties.

The Officiating Public Prosecutor (Mr. *A. H. S. Reid*) for the Crown.

EDGE, C. J., BANERJI and BURKITT, JJ.—We have to consider in revision certain orders passed by the Magistrate of Benares. So far as we need refer to those orders, they were that one Rahmat-ullah should re-build two *baradaris* which, according to the order, had partly fallen in the rains, and which he had by misconception dismantled. The order directed the applicant in the proceeding in revision to re-build them on their old site, and of the same shape and stone structure as they were formerly, and directed him to begin the re-building at once. The other part of the order was that nobody, even though possessing a decree for the plot there, should act without report to, and permission of, the District Magistrate in any new way in dismantling, building, repairing, or should cut or get cut any tree from the place there without report to, or permission of, the District Magistrate. The District Magistrate's explanation of his powers was that he had got power to make these orders as an executive officer; and he also suggested that, whether he had power or not as an executive officer, they were good orders under s. 144 of Act No. X of 1882, and, as such, ought to be upheld by this court. When the matter came before us, we were anxious to ascertain whether there was any statutory authority conferring power on Magistrates to make orders such as these, and we directed notice to

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go to the Magistrate to show cause why his order should not be set aside. The Public Prosecutor has appeared here to show cause. His contention has been, as to the order to re-build, that that was an order which could lawfully be made under s. 144 of Act No. X of 1882; that it came under the words "to take certain order with certain property in his possession or under his management," that is to say in the possession, or under the management, of Rahmat-ullah. Those words are undoubtedly very wide and equally vague, but we must assume that the Legislature in using those words in the section did not intend to give a Magistrate such extraordinary powers as would enable him to order, under that section, a building which had fallen down in private grounds to be re-built by the owner of those grounds. If Mr. *Reid's* contention as to the re-building part of the order were correct, a litigant who had established his right to open windows in his house or to maintain open ancient windows in his house could be restrained for two months by a Magistrate's order under s. 144; and in certain cases; by a further order of a Local Government under that section, permanently, from availing himself of the right decreed to him by the Civil Court, and that even if the decree were a decree of the Queen in Council. We may give another illustration. A, a private person, in order to prevent his neighbour B overlooking A's premises, might put up a hoarding on his own land, and on his removing it, if B objected that the removal of the hoarding would cause annoyance to him and his family, who could be overlooked from A's ground, the Magistrate could, if Mr. *Reid's* contention is correct, make a lawful order under s. 144 ordering A to resuscitate the hoarding on his own ground, which he had pulled down. There must be a reasonable construction put on these vague words of the statute.

To refer to the other portion of the order. Mr. *Reid* at first contended that the Magistrate would have jurisdiction under s. 144 to restrain a man from executing a Civil Court decree, if he was not satisfied that the man was rightfully entitled to execute the decree in the way in which it was being executed. The execution of a Civil Court decree is provided for by the Code of Civil Procedure,

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and, in our opinion, a Magistrate has no more jurisdiction to interfere with the execution of a Civil Court decree than he has to question the legality or propriety of the decree itself.

Where a Magistrate happens to be Collector, he may have to execute the decree, if execution is sought against ancestral property, but there he is a *quasi* court executing the decree; but, as Magistrate, his duty in connection with the execution of a Civil Court decree begins and ends with the rendering of necessary protection to the officers of the Civil Court lawfully executing the decree of the Civil Court, and neither he nor the Local Government, under s. 144, has any jurisdiction to make any order restraining the execution of a Civil Court decree, or threatening with a prosecution under s. 188 of the Indian Penal Code any person who attempts to execute a Civil Court decree in the particular place, without the Magistrate's permission.

The authority of every Magistrate to do any act as Magistrate or as Collector, if such authority exists, must ultimately be found in the powers conferred by Parliament. The immediate power may be an executive order of the local administration, but the power of the local administration to make an order must be derived either directly or indirectly from Parliament, and it is a mistake to assume that, because an officer is an executive officer or a judicial officer, he has any power to interfere with private or public persons which cannot be derived from a lawful origin, *viz.*, the Acts of Parliament.

We hold that these orders in the respects which we have mentioned were *ultra vires*, and that the Magistrate had no power or jurisdiction to make them.

In order to avoid being misunderstood, we think it right to say that it is necessary that a Magistrate should have the extensive powers which are conferred on him by s. 144 of Act No. X of 1882, and we think that as long as his order is within that section, that is, so long as he has jurisdiction under that section to make it, he should be given the widest discretion. The powers under that section are intended to be used summarily for the protection of the

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public, including private individuals, and the preservation of the peace. If this order had been one which the Magistrate had power to make under s. 144, we should have had no jurisdiction or power to interfere with it. We may say further that the Magistrate of Benares, in our opinion, acted with the very best intentions, but unfortunately he did exceed his jurisdiction.

Our order is that the orders prohibiting any persons from executing Civil Court decrees in that place and directing Rahmat-ullah to re-build the *baradari* are hereby set aside.

The proceedings which have been instituted under s. 188 of the Indian Penal Code for disobeying the orders we have set aside must be discontinued, otherwise a remedy may be sought by application to this Court.

APPELLATE CIVIL.

1895
April 16.

Before Mr. Justice Knox and Mr. Justice Aikman.

THE ELGIN MILLS COMPANY (OPPOSITE PARTY) *v.* THE MUIR MILLS COMPANY (PETITIONER).*

Act No. V of 1888 (*Inventions and Designs Act*) *ss.* 4, 30—*Invention—Improvement—Combination of known substances to produce a known result—Burden of proof.*

Held, that a combination, effected by placing one known material side by side with another known material, not involving the exercise of any special inventive power, and ending in a result which differed from previous results only because the materials so placed produced an improved article, did not amount to an "invention" as defined by Act No. V of 1888.

Held further, that it is for the person who claims an exclusive privilege under the Inventions Act to prove that the facts exist which entitle him to the privilege claimed.

THIS was an appeal under s. 10 of the Letters Patent from a judgment of Blair, J. The facts of the case are as follows :—

In the year 1890, one Clarence Noble Cline, then an employé of the Elgin Mills Company, Cawnpore, obtained under Act No. V of 1888 a patent in respect of a particular kind of tent devised by him, which he called "the native cavalry trooper's pál." In the same

* Appeal No. 80 of 1893, under s. 10 of the Letters Patent, from an order of Blair, J., dated the 27th May 1893.