

what principle any such order could have been made. We dismiss the appeal with costs, and set aside so much of the decree below as decreed a sale and an injunction.

Appeal dismissed.

1895

GANGA PRA-
SAD
v.
CHUNNI LAL.

1895

December 6.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Birkitt.

NAJJU KHAN (PLAINTIFF) v. IMTIAZ-UD-DIN (DEFENDANT).*

Co-sharers—Rights of co-sharers as to erection of buildings on joint land.

One of several joint owners of land is not entitled to erect a building upon the joint property without the consent of the other joint owners, notwithstanding that the erection of such building may cause no direct loss to the other joint owners. *Shadi v. Anup Singh* (1) referred to.

THE facts of this case appear from the order of reference made by Banerji, J., which was as follows:—

“This appeal relates to a certain building called a *sehdari*, which the respondent has erected upon land belonging jointly to him and to the appellants. The lower appellate Court has found that the building was constructed without the acquiescence of the appellants, but it has dismissed his claim for the removal of the building and for the restoration of the site to its former position, on the ground that the appellants have not proved any substantial injury. The Subordinate Judge has not referred to any authority in support of his view, but he had evidently in his mind the ruling of this Court in *Paras Ram v. Sherjit* (2). The soundness of the proposition laid down in that case was questioned at least in the judgment of the learned Chief Justice in the Full Bench case of *Shadi v. Anup Singh* (1). The question being one of importance, and having regard to the rulings referred to above, I deem it desirable that this case should go before a Bench of two Judges.”

Pandit *Moti Lal* for the appellants.

• The respondent was not represented.

EDGE, C. J., and BURKITT, J.—One co-sharer erected a new building on some common land without the consent or acquiescence

* Second Appeal No. 1250 of 1893, from a decree of Pandit Baj Nath, Subordinate Judge of Moradabad, dated the 17th May 1893, modifying a decree of Babu Sheo Prasad, Munsif of Bijnor, dated the 14th December 1891.

(1) I. L. R., 12 All., 436.

(2) I. L. R., 9 All., 661.

1895

NAJJU KHAN
v.
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DIN.

of other co-sharers. One of the other co-sharers has brought this suit to have a mandatory injunction for the demolition of the building. The suit was resisted upon the ground that the land was not joint. This part of the claim to which we are referring was decreed by the first Court. On appeal, the Subordinate Judge dismissed the suit so far as this part of the claim is concerned; the other part of the claim had been dismissed by the first Court and from that there was no appeal.

The plaintiffs have appealed from the decree of the Subordinate Judge. The Subordinate Judge was of opinion that, although the land was common land held jointly by the co-sharers, the defendant's new building did not cause any direct loss to the other co-sharers. That is not the point in our opinion. The law provides a legitimate means by which any co-sharer may obtain partition. The law does not favor one co-sharer adversely to the other co-sharers making a partition in his own favor, and selecting the portion of the land he likes by erecting a building upon it. This case is within the principle of the decision in *Shadi v. Anup Singh* (1). We set aside the decree of the Court below with costs in both Courts and restore and confirm the decree of the first Court.

Appeal decreed.

REVISIONAL CRIMINAL.

1895

December 9.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Burhitt.

BUDDHU v. BABU LAL.

Act No. XLV of 1860 (Indian Penal Code) section 409—Criminal breach of trust—Conviction for Criminal breach of trust on a general deficiency in accounts.

Held that a person accused under section 409 of the Indian Penal Code might be legally convicted of the offence defined in that section on proof of a general deficiency in his accounts, and that it was not necessary that the receipt of and non-accounting for specific items should be charged and proved against him. *Queen-Empress v. Kellie* (2) approved.

In this case one Babu Lal had been convicted of the offence under section 409 of the Indian Penal Code by a first class Magistrate of Allahabad, and sentenced to six months' rigorous imprisonment

(1) I. L. R., 12 All., 436

(2) I. L. R., 17 All., 163