

when by reason of limitation or otherwise they cannot put into effect the decree first obtained. In this respect suits for declaration of right to partition differ from most other suits. So long as the property is jointly held so long does a right to partition continue. When a person having a right to partition, and desiring to partition, has his right challenged, it appears to us he can maintain a suit for a declaration, provided his prior decree is not still enforceable." As it appears to us, the right to enforce partition is a legal incident of a joint tenancy, and so long as such tenancy subsists so long may any of the joint tenants apply to the Court for partition of the joint property. For these reasons the Courts below have erred in dismissing the suit. We must therefore allow the appeal. As the case in both the lower Courts was determined upon a preliminary point, we set aside the decree and remand the suit to the Court of first instance through the lower appellate Court, with directions that it be reinstated on the file of pending cases in its original number and be disposed of on the merits. Costs here and hitherto will abide the event.

1906

 BISHESHAR
 DAS
 v.
 RAM
 PRASAD.

Before Sir John Stanley, Knight, Chief Justice.

EMPEROR v. JAGDEO SINGH.*

 1906
 April 21.

Criminal Procedure Code, section 110—Security for good behaviour—Subsequent conviction—Forfeiture of bond—Imprisonment for unexpired portion of period for which security had been given.

Held that where a person has given security for good behaviour and his security is subsequently forfeited the amount of his forfeited bond may be exacted, but he cannot be also committed to prison for the unexpired portion of the term for which security had been taken.

THE applicant, Jagdeo Singh, was in June, 1904, called upon to furnish security for his good behaviour for three years or in default to suffer rigorous imprisonment. The security was furnished and Jagdeo Singh was released.

On October 2nd, 1905, Jagdeo Singh was convicted of the offence of criminal trespass. Jagdeo Singh was on October 16th sent to prison for the unexpired balance of the three years,

* Criminal Reference No. 176 of 1906.

1906

JAGDEO
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v.
KING
EMPEROR.

unless he furnished fresh security, and later the amount of his forfeited bond was exacted.

The Sessions Judge of Gorakhpur, in referring the case to the High Court, remarked :—

“The only order which in my opinion is wrong and contrary to law is the order of Pandit Lachman Sitaram Kher of 16th October, 1905, whereby he committed Jagdeo Singh to prison to suffer rigorous imprisonment unless and until he furnished fresh security, because the security originally furnished had been forfeited.

“I can find no section in the Criminal Procedure Code under which such an order can be passed. Section 126 of the Code does not apply. It is only under that section and section 123 of the Code that a person can be imprisoned in default of furnishing the security demanded, and under these sections a Magistrate can only commit to jail for a period of one year. On 16th October, 1905, only one year, four months and nine days had passed out of the period of three years, so that Jagdeo Singh has been committed to jail for a period considerably over one year. But in my opinion there is no section in the Code which enables him to commit to jail in this way for any period whatsoever. Chapter XLII of the Code does not authorize it. That Chapter only enables a Magistrate to commit to the civil jail for six months if the penalty ordered to be paid cannot be recovered.

“It was in the Magistrate's option to enforce the penalty or not, but I fail to see how he also had power to commit to jail and thereby doubly punish Jagdeo Singh.

“If the bond for Rs. 500 has been forfeited, it may be that the Magistrate can take fresh proceedings under Chapter VII against him and call on him again to provide security; but I know of no section which enables him thus summarily to sentence Jagdeo Singh to one year and seven months' rigorous imprisonment as he had done.”

STANLEY, C.J.—For the reasons stated by the learned Sessions Judge, I allow this application and set aside the order of Pandit Lachman Sitaram Kher, dated the 16th of October, 1905, and further direct that if Jagdeo Singh has given security as directed by the order of the Sessions Judge of the 6th of March, 1906, that security shall be discharged. If, on the other hand, Jagdeo Singh is in jail he will be at once released.