

1907

PARBATI
KUNWAR
v.
MAHMUD
FATIMA.

Hill and Brett, JJ., say:—"The cause of action of a plaintiff suing in ejection cannot, so far as we can perceive, be affected by the title under which the defendant professes to hold possession. It matters not to the plaintiff how the defendant may explain the fact that he is in possession or seek to defend his possession. What concerns the plaintiff is that another is wrongfully in possession of what belongs to him and that fact gives him his cause of action. If this is so where there is but one person in possession, can there be a difference when the land is in the possession of more than one? We think not. It appears to us, so far as the plaintiff's cause of action is concerned, that it is a matter of indifference to him upon what grounds the different persons in possession may seek to justify the wrongful detention of what is his. What he is entitled to claim is the recovery of possession of his land as a whole, and not in fragments, and we think that all persons who oppose him in the enforcement of that right are concerned in his cause of action and ought accordingly to be made parties to a suit in which he seeks to give effect to it." We agree with the learned Judges in this expression of their view of the law. We may also refer with approval to two decisions in this High Court in which the question of multifariousness was considered. The one is that of *Indar Kuar v. Gur Prasad* (1) and the other the case of *Mazhar Ali Khan v. Sujjad Husain Khan* (2).

For these reasons the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

*Before Mr. Justice Richards.**

EMPEROR v. RADHE LAL AND OTHERS.

Act (Local No. III of 1901 (United Provinces Land Revenue Act), sections 147, 227 and 228—Act No. XLV of 1860 (Indian Penal Code), section 353—Attachment—Power of Tahsildar to issue warrants of attachment for realization of revenue.

Held that a Tahsildar has no power under the United Provinces Land Revenue Act, 1901, to issue a warrant of attachment in order to realize arrears

* Criminal Revision No. 630 of 1906.

(1) (1898) I. L. R., 11 All., 33.

(2) (1902) I. L. R., 24 All., 358.

of Government revenue, nor is a warrant issued by a Tahsildar validated by a general authority to that effect given to him by the Collector of the district.

IN this case the tahsildar of a tahsil in the Gorakhpur district reported to the Collector that the inhabitants of a particular area within the limits of his tahsil were giving him trouble as regards the collection of land revenue, and asked for a general permission to issue warrants of attachment against them. The Collector granted the permission asked for, and the tahsildar accordingly issued certain warrants of attachment to a probationary tahsildar. When it was attempted to execute these warrants by seizure of property the tahsil peons were resisted by Radhe Lal and other persons, though no harm of any serious nature was caused to them. Radhe Lal and others were charged with the commission of offences under section 147 and section 353 of the Indian Penal Code and were convicted and sentenced to varying terms of imprisonment by a magistrate of the first class. They appealed against their convictions and sentences, but their appeals were dismissed by the officiating Sessions Judge, who confirmed the Magistrate's order. Radhe Lal and others then applied in revision to the High Court, their main plea being that the issue of a warrant of attachment by a tahsildar was illegal.

Mr. *A. H. C. Hamilton*, for the applicants.

The Assistant Government Advocate (Mr. *W. K. Porter*), for the Crown.

RICHARDS, J.—This is an application for revision of an order, dated the 20th September 1906, of the Officiating Sessions Judge of Gorakhpur, confirming the order of Babu Ganga Prasad, a magistrate of the first class, sentencing the first three applicants to five months' under sections 147 and 353 of the Indian Penal Code and sentencing the last five of the applicants to three months' rigorous imprisonment each.

It would appear that the applicants had made default in the payment of Government revenue. Property was seized under what was alleged to be an attachment under the provisions of the Land Revenue Act of 1901. The applicants resisted the seizure of the property and hence the charge against them and their conviction.

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It is contended on behalf of the applicants that the attachment was illegal. Section 147 of the Land Revenue Act empowers the Collector to attach and sell the property of a person making default in payment of Government revenue. Section 227, subsection 16, confers this power to attach and sell property upon an Assistant Collector of the first class in charge of a sub-division of a district. Section 228 confers a like power on an Assistant Collector of the first class although he is not in charge of a sub-division, but his power is limited to such cases or classes of cases as the Collector may from time to time refer to him for disposal. The Act in no case confers this power of attachment and sale on any other person. The attachment in the present case was not made by or under the authority of the Collector, or of the Assistant Collector in charge of a sub-division, or by an Assistant Collector to whom the case had been referred under the provisions of section 228. The attachment and sale was made by the tahsildar, who gave some kind of a warrant of authority to the probationary tahsildar. The only sanction for the action of the tahsildar was a general order which the Collector had endorsed on an application by the tahsildar dated the 24th May 1906.

This application or document commences with a kind of a report from the tahsildar to the Collector that the landholders are troublesome people who know the law and against whom it would be advisable to have a general order for attachment and sale. The endorsement by the Collector purports to grant a sanction to the general attachment in pursuance of the prayer of the application. In my judgment the attachment and sale of the property was illegal. It is quite clear that the Legislature conferred the power of sale and attachment only upon the Collector and Assistant Collector of the first class in manner already stated. The Collector and Assistant Collectors of the first class are bound to exercise themselves the power and discretion vested in them by law, and they have no right to delegate their authority to a tahsildar. The Board's Circular, Vol. I, Part III, relating to the recovery of arrears of land revenue under the Land Revenue Act of 1901, Rule No. 4, expressly provides that process under section 149 is only to be issued by or under the orders of the Collector or Assistant Collector in charge of the sub-division.

In my judgment the passing of a general order for all cases whether of a sub-division or particular villages or village is not a compliance with the Act or rules. It is stated that the practice adopted in this case is a general practice. If this is the case, the practice in my judgment ought to cease.

On the general merits of the case it would appear that the persons seizing the property were acting in good faith under colour of their office. The convictions might be sustained under sections 352 and 147 of the Indian Penal Code, if not under section 353. It is unnecessary, however, to alter the convictions in view of the order which I now intend to make. Being of opinion that the applicants have been sufficiently punished by the imprisonment they have already undergone, I direct that in the cases of those applicants whose terms of imprisonment have not yet expired, they be immediately released. In the cases of the other applicants I make no order. The record may be returned.

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EMPREOB
D.
RADHE LAL.

APPELLATE CIVIL.

1907
January 7.

Before Mr. Justice Sir George Knox and Mr. Justice Richards.

INTIAZI BEGAM (JUDGMENT-DEBTOR) v. DHUMAN BEGAM (DECREE-HOLDER) AND BANDE ALI (AUCTION PURCHASER).*

Civil Procedure Code, sections 310A, 244 (c)—Execution of decrees—Order refusing to accept a deposit tendered under section 310A—Appeal.

Held that an order refusing to accept a deposit tendered under the provisions of section 310A of the Code of Civil Procedure is an order falling within the purview of section 244 (c) of the Code and is appealable as such. *Gulzari Lal v. Madho Ram* (1) and *Phul Chand Ram v. Nursingh Pershad Misser* (2) referred to. *Bashir-ud-din v. Jhori Singh* (3) not followed.

IN this case Dhuman Begam in execution of a decree against Intiazi Begam caused certain immovable property of the judgment-debtor to be sold. The sale was held on the 13th of September 1905, and the property was purchased by Bande Ali and Ali Husain. On the 2nd of November 1905, the day upon

* Second Appeal No. 377 of 1906 from a decree of H. W. Lyle, Esq., District Judge of Farrukhabad, dated the 3rd of January 1906, confirming a decree of Babu Gopal Das Mukorji, Munsif of Kaimganj, dated the 6th of December 1905.

(1) (1904) I. L. R., 26 All., 447. (2) (1898) I. L. R., 28 Calc., 78.
(3) (1898) I. L. R., 19 All., 140.