

obey the order of 13th November 1903 which directed them to bring a suit in a Civil Court within three months from the date of such order, and the present suit is therefore barred. I accordingly decide this point against the plaintiffs appellants. In this view it is unnecessary to decide the second question as to whether or not the decision by the Revenue Court in the rent case bars the present suit. The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Aikman.

EMPEROR v. MAHENDRA SINGH AND ANOTHER.*

Criminal Procedure Code, sections 110 and 526—Security for good behaviour—Transfer.

Hold that proceedings under section 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted. *In the matter of the petition of Amar Singh (1) and In the matter of the petition of Gudar Singh (2)* followed.

IN this case proceedings under section 110 of the Code of Criminal Procedure were pending against two persons by name Chaudhri Mahendra Singh and Ujagar Singh in the Court of a Deputy Magistrate of the Etawah district. Several witnesses had been examined, and the case stood adjourned for a few days, when the Magistrate of the district ordered two Tahsildars to proceed to the locality and collect evidence bearing on the case. Mahendra Singh and Ujagar Singh thereupon applied to the High Court for the transfer of the proceedings against them to some other district upon the ground that the action of the District Magistrate had seriously prejudiced their chances of being discharged.

Mr. C. Ross Alston, for the applicants.

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

BANERJI and AIKMAN, JJ.—It has been held by this Court in *In the matter of the petition of Amar Singh (1)* and in *In the matter of the petition of Gudar Singh (2)* that a case like the

* Miscellaneous No. 97 of 1907.

(1) (1893) I. L. R., 16 All., 9. (2) (1897) I. L. R., 19 All., 291.

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present cannot be transferred to another district. The question is open to argument, but we do not feel ourselves justified in disregarding these rulings. We therefore dismiss the application. At the same time we cannot approve of the action taken by the District Magistrate, however well-intentioned that action may have been, specially having regard to the fact that the case might come before himself in appeal under section 406 of the Code of Criminal Procedure.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Aikman.

LOHRE (PLAINTIFF) v. DEO HANS AND ANOTHER (DEFENDANTS).*

Appeal—Parties—Estoppel—Procedure.

The plaintiff having obtained a decree against one of two defendants acquiesced in that decree, but the defendant judgment-debtor appealed, making the other defendant also a party to his appeal, with the result that the plaintiff's suit was dismissed. *Held* that it was not open to the plaintiff in second appeal to contend that the Court below should have made a decree against that defendant with regard to whom he had acquiesced in the dismissal of his suit. *Farzand Ali Khan v. Bismillah Begam* (1) followed.

THE plaintiff in this case sued a tenant, one Deo Hans, for rent. The tenant pleaded payment of the whole rent to Sita Ram, the plaintiff's co-sharer in the holding. The Court of first instance decreed the suit as against Sita Ram and dismissed it *qua* Deo Hans. Sita Ram then appealed, making Deo Hans a party to his appeal, but the plaintiff acquiesced in the decree which he had obtained against Deo Hans alone. The lower appellate Court (District Judge of Agra) allowed Sita Ram's appeal, and dismissed the suit. The plaintiff appealed to the High Court, urging that the Court below was wrong in dismissing the plaintiff's claim as against both defendants.

Pandit Mohan Lal Sandal, for the appellant.

Pandit Baldeo Ram Dave, for the respondent Sita Ram.

BANERJI and AIKMAN, JJ.—The suit which has given rise to this appeal was brought by Lohre, appellant, against Deo Hans, respondent, for arrears of rent for the years 1309 to 1312 Fasli.

* Second Appeal No. 158 of 1906 from a decree of F. E. Taylor, District Judge of Agra, dated the 12th of December 1905 reversing a decree of Habib-Ullah, Assistant Collector, Agra, dated the 28th of June 1905.

(1) (1904) I. L. R., 27 AL., 23.

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