

1909

SHIAM LAL
v.
RAM PIARI,

himself a creditor of the latter; Anson, *Law of Contract*, 8th (American) ed., 442, 443.

The following cases were also referred to: *Dakhina Mohan Roy v. Saroda Mohan Roy* (1), *Peruvian Guano Co. v. Dreyfus Brothers* (2) and *Seth Chitor Mal v. Shib Lal* (3).

KNOX, ACTING C.J. AND RICHARDS, J:—After carefully listening to the very able and elaborate arguments addressed to us on behalf of the appellants, we are of opinion that the judgment delivered by our brother BANERJI is a judgment in accordance with the law as prevailing and as understood in these Provinces. We therefore are not prepared to interfere. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1909
August 7.

Before Mr. Justice Richards and Mr. Justice Alston.

EMPEROR v. ABDUL RAHMAN AND OTHERS.*

Criminal Procedure Code, sections 157, 159, 476—Police report by Sub-Inspector—Further investigation by Superintendent—Subsequent inquiry by Magistrate—Order for prosecution of witnesses examined in the Magistrate's inquiry—Act No. XLV of 1860 (Indian Penal Code), section 193.

On the strength of a police report the District Magistrate ordered the Superintendent of Police to investigate a certain case. The Superintendent made an investigation and came to the conclusion that the case was not a true one; but at the same time suggested that a magistrate might be sent to inquire into it. The District Magistrate accordingly deputed a magistrate of the first class to inquire. He made an inquiry which resulted in an order for the prosecution of certain witnesses who had given evidence before him. *Held* that there was no legal authority for the inquiry held by the Magistrate, and his order for the prosecution of the witnesses was therefore invalid. *In the matter of the petition of Kandheiya Lal* (4) and *Mouli Darzi v. Nauranji Lal* (5) referred to.

THE facts of the case are fully stated in the judgment of the court.

Babu *Satya Chandra Mukerji*, for the applicants.

Mr. *R. Malcomson* (Assistant Government Advocate), for the Crown.

* Criminal Revision No. 314 of 1909, from an order of L. Marshall, Sessions Judge of Mainpuri, dated the 8th of June, 1909.

(1) (1893) I. L. R., 21 Calc., 142. (3) (1892) I. L. R., 14 All., 273.
(2) [1892] A. C., 166. (4) Weekly Notes, 1899, p. 87.
(5) (1900) 4 C. W. N., 351.

RICHARDS and ALSTON, JJ.—This is an application in revision to set aside two orders, dated respectively, the 17th and 19th of May, 1909, purporting to have been made under the provisions of section 476 of the Code of Criminal Procedure. That section provides that “when any Civil, Criminal, or Revenue court is of opinion that there is ground for inquiring into any offence referred to, in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding,” such court may send the case for inquiry or trial to the nearest Magistrate of the first class.

The petitioners contend that the proceeding in which the offence in question is alleged to have been committed, was not a proceeding in a Civil, Criminal, or Revenue court, nor was the matter brought under the notice of the court in the course of a judicial proceeding; and that being so, there was no jurisdiction to make the order complained of. As neither of the lower courts have set out the course of the proceedings which culminated in the final orders now challenged in revision, we have had some difficulty in dealing with this application. So far as we have been able to ascertain, however, the facts appear to be as follows:—A report was made at the Jaswantnagar thana, that the head master of the school there had been guilty of a certain offence. The Sub-Inspector reported the matter, and apparently considered that the case was not a true one. The District Magistrate must have received notice of this report, for he verbally directed the Officiating Superintendent of Police to inquire into the case. This appears from the opening words of the Superintendent's report. The Superintendent went to the place and held an investigation and came to the conclusion that the charge was not a true one. He, however, suggested that a Magistrate should be sent to inquire into the matter. The District Magistrate therefore ordered a Deputy Magistrate of the first class to proceed to the spot and hold a magisterial inquiry into the case. This the Deputy Magistrate did, with the result that he came to the conclusion that the case was entirely false. He made a report to that effect and recommended, amongst other things, that certain witnesses who had supported the charge on oath in the course of his inquiry should be prosecuted for giving false evidence. The

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District Magistrate accepted this suggestion, but being of opinion that the Deputy Magistrate who had held the inquiry was the proper person to take action under section 476 of the Criminal Procedure Code, he directed him to do so.

The Deputy Magistrate thereupon proceeded to make the orders complained of, presumably acting under section 476. The question we have to consider is, under what section of the Code or other legal sanction did the Deputy Magistrate hold his inquiry. It is clear that he did not act under an order passed by virtue of the powers given by section 202 of the Code. The Assistant Government Advocate has argued that the inquiry was held under section 159 of the Code. That section provides that when a Magistrate receives a report such as is mentioned in section 157, he may direct an investigation, or if he thinks fit, at once proceed or depute a subordinate magistrate to hold a preliminary inquiry into the case.

It is contended on behalf of the petitioners that proceedings can only be taken under section 159 when the order is based upon the report referred to in section 157. It is further contended that section 159 gives an alternative procedure only; and that as the District Magistrate had already directed an investigation by the Superintendent of Police, he could not subsequently direct an inquiry by a Magistrate. As to the first point, it is clear that the order to the Deputy Magistrate was passed after the Superintendent of Police had been directed to investigate. It was not until the report upon that investigation had been submitted that the Deputy Magistrate was directed to hold an inquiry. This being so, the case is very similar to that of *Kandhairya Lal* (1). It was held in that case by STRACHEY, C.J., that a Magistrate could only hold an inquiry under section 159, when the order directing it was passed in consequence of a report submitted under section 157, which report precedes an investigation. A similar view was taken by a Bench of the Calcutta High Court in the case of *Mouli Darzi v. Naurangi Lal* (2). We think that we ought not to disregard these cases. In this view the orders now before us in revision were passed without jurisdiction. The Sessions Judge does not appear to have realized the difficulties of the case, though

(1) Weekly Notes, 1899, p. 87. (2) (1900) 4 C. W. N., 351.

it is only fair to him to say that the grounds taken before him in revision were not calculated to bring those difficulties before him. He, however, expended an unnecessary amount of time and labour in dealing with those grounds. It would have been quite sufficient to have remarked that they were misleading and unsubstantial without drawing up a proceeding on the subject.

We allow this application and set aside the orders of the 17th and 19th May, 1909, and any orders that may have resulted from them.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Banerji and Mr. Justice Tudball.

SHIB SHANKAR LAL AND ANOTHER (DEFENDANTS). v. SONI RAM (PLAINTIFF).
Act No. XV of 1877 (Indian Limitation Act), section 19, schedule II, articles 120, 148—Acknowledgment—Acknowledgment by widow in possession of husband's estate not binding on reversioner—Limitation—Act No. XIV of 1853 (Limitation), section I, clause 15.

Held that the widow and daughter of a mortgagee in possession as such of the mortgaged property are not competent to give an acknowledgment of the title of the mortgagor so as to save limitation within the meaning of the Indian Limitation Act, 1877, in respect of a suit for redemption brought by the representative in interest of the original mortgagor against the reversioners. *Bhagwanta v. Sukhi* (1) and *Chhiddu Singh v. Durga Dei* (2) referred to.

Held also that, unless there is a distinct provision to the contrary, the validity of an acknowledgment set up by a plaintiff as saving limitation in his favour must be decided with reference to the law in force when the suit is brought, and not with reference to that in force when the acknowledgment was made. *Gurupadapa Basapa v. Virbhadrappa Irsangapa* (3) referred to.

THIS was a suit for redemption. The material facts are as follows :—

Dalip Singh and others, owners of 20 biswas of Khira Buzurg, made a usufructuary mortgage thereof in favour of Khushwakht Rai on January 2nd, 1842. After Khushwakht Rai's death his widow Musammat Jamna came into possession of the mortgaged property and she sub-mortgaged 10 biswas to Gulab Rai and Debi

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* Second appeal No. 635 of 1908 from a decree of H. J. Bell, District Judge of Aligarh, dated the 24th of March 1908, confirming a decree of Muhammad Shafi, Subordinate Judge of Aligarh, dated the 16th of September 1907.

(1) (1899) I. L. R., 22 All., 33. (2) (1900) I. L. R., 22 All., 382
 (3) (1883) I. L. R., 7 Bom., 459.