

mortgagor, whose wife, it was alleged, had purchased the property *benami* for him. The judgement of two of the members of the Court in the most express language decided the case upon the ground that the plaintiff was claiming through Ram Sahai, and that inasmuch as Ram Sahai could not have maintained the suit against Mohanian, the persons who claimed through him had no better right to do so. We think that under the circumstances of the present case the plaintiff's claim is as heir of her father Bhola Nath, that she is not claiming in any way through her mother Musammat Sundar Dei and that therefore her suit does not come within the provisions of section 66. The facts being as already stated, she, in our opinion, was entitled to recover possession by partition of the property in dispute and was also entitled to mesne profits as held by the court of first instance.

We therefore allow the appeal, set aside the decree of this Court and also of the lower appellate court and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tullball.

CHHEDI v. MUHAMMAD ALI*.

Act XIII of 1859—(*Workman's Breach of Contract Act*)—*Magistrate not competent to take proceedings under, unless moved by the employer.*

The provisions of Act XIII of 1859 can only be applied at the instance of the employer. A magistrate has no jurisdiction *suo motu* to pass orders under that Act as an alternative to taking action under the Indian Penal Code.

THE facts of this case were as follows :—

One Muhammad Ali made a complaint against Chhedi of cheating. Process was issued, but before the witnesses for the prosecution had been cross-examined or any defence witnesses had been called or a charge framed, the Magistrate passed an order, purporting to be under Act No. XIII of 1859, to the effect that Chhedi was either at once to pay Rs. 60, which had been advanced to him by Muhammad Ali or to give security for Rs. 60 with one surety that he would make two pairs of boots every week for Muhammad Ali; in default he was to undergo two months' rigorous

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* Criminal Revision No. 942 of 1912.

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imprisonment. The Sessions Judge of Cawnpore referred the case to the High Court recommending that the order should be set aside.

Mr. *A. P. Dube*, for the applicant.

Munshi *Saty Narain* and Maulvi *Kamaluddin Ahmad Jafari*, for the opposite party.

TUDBALL, J.—In this case one Muhammad Ali made a complaint against the present applicant, Chhedi, charging him with the offence of cheating, under section 420 of the Indian Penal Code. He had prior to that preferred a complaint under Act XIII of 1859, but had withdrawn that complaint and preferred a complaint of cheating. The Magistrate issued process to Chhedi; a date was fixed; evidence of the prosecution witnesses was taken, and then a further date was fixed for their cross-examination. There were a few postponements and the cross-examination did not take place. Then, suddenly, without examining the accused or framing any charge against him or taking any defence, and relying on the statements in chief of the prosecution witnesses, the Magistrate passed an order purporting to be under Act XIII of 1859, to the effect that Chhedi was either at once to repay the advance of Rs. 60 or give security for Rs. 60 with one surety that he would make two pairs of boots every week for Muhammad Ali; in default of carrying out one of the two orders already mentioned, he was to undergo rigorous imprisonment for two months. Chhedi was sent to jail. The case has been referred to this Court by the learned Sessions Judge with the recommendation that the order be set aside. Further comment is unnecessary. The Magistrate has acted quite illegally. There was no case under Act XIII of 1859 before the Magistrate. That Act can only be put in motion by the employer. I set aside the order of the Magistrate and direct that the complaint of Muhammad Ali be heard *de novo* by some other Magistrate to whom the District Magistrate may think fit to transfer it and not by the Magistrate whose order has just been set aside.

Order set aside.