

1912

ATMA RAM  
v.  
UGRA SEN.

the case to the court of first instance, through the lower appellate court, with directions to re-admit the suit under its original number in the file and proceed to hear and determine the case on its merits. Costs here and in the courts below will be costs in the cause.

*Appeal decreed and cause remanded.*

## REVISIONAL CRIMINAL.

1913

January, 2.

Before Mr. Justice Tudball.

EMPEROR v. RAMA AND OTHERS.\*

*Act No. XLV of 1860 (Indian Penal Code), section 188—Order duly promulgated by public servant—Order forbidding persons to enter railway premises except for travelling.*

*Held* that the public have a right to enter upon railway premises for many purposes other than travelling, and an order forbidding persons to enter a railway station except for *bonâ fide* purposes of travelling would be an illegal order.

In the particular instance, however, it did not appear that the order in question was issued by any authority which, supposing it to be otherwise legal, would have had power to issue it.

THE facts of this case were as follows :—

An order was published at Bindhachal railway station on the East Indian Railway forbidding *pandas* to go on the railway station except for *bonâ fide* purposes of travelling. Certain *pandas* who were found at the station soliciting pilgrims were accordingly charged with an offence under section 188 of the Indian Penal Code for disobedience to this order. They were convicted and sentenced to certain fines.

The Sessions Judge of Mirzapur acting under section 438 of the Code of Criminal Procedure thereupon referred the case to the High Court with the recommendation that the convictions and sentences should be set aside.

Neither the accused nor the Crown were represented.

TUDBALL, J.—Certain persons have been convicted by a Magistrate of an offence under section 188, Indian Penal Code, and have been sentenced to pay certain fines. The case has been referred to this Court by the Sessions Judge with the recommendation that the

\* Criminal Reference No. 1003 of 1912.

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convictions and sentences be set aside and the fines refunded. As far as it is possible to do so from the record I gather the facts to be more or less as follows:—Some officer or other has published an order forbidding the accused, who are *pandas*, from going on the railway station at Bindbachal except for *bond fide* purposes of travelling. The record does not show by whom that order was issued and whether he had power to issue it. There is nothing to show that it was issued to the accused personally: apparently it was generally proclaimed. The record shows that the accused went on to the platform and importuned certain pilgrims. The Magistrate has therefore held them guilty under section 188, Indian Penal Code. That section runs as follows:—

“Whoever knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.”

There is nothing on the record to show that any order was promulgated by a public servant lawfully empowered to promulgate such order. It is true that the case was tried summarily, and in a summary trial the evidence need not be recorded, but the record shows that no evidence whatsoever was taken to prove the order that was promulgated or to prove that the person who issued the order was authorized to issue it. Moreover, if the order be, as described in the opening clause of the judgement, forbidding persons to enter railway quarters except for *bond fide* purposes of travelling, such an order is far from being legal. The public have a right to go to the railway premises for many other purposes than travelling and orders forbidding persons to enter railway premises except for travelling purposes could not legally be issued. It would indeed defeat many other purposes for which railways are intended. For this reason the order must be set aside.

There are other grounds, as pointed out by the learned Sessions Judge, on which it is open to this Court to set aside these convictions, but I do not think it necessary to discuss them. It is incumbent on the prosecution to prove the necessary ingredients which go to constitute an offence. Unless the proof is before the court it cannot be said that the offence has been established.

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I therefore set aside the convictions and sentences and direct that the fines if paid be refunded.

*Convictions set aside.*

## APPELLATE CIVIL.

1913

January, 3.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.*  
NARAIN DEI (PLAINTIFF) v. DURGA DEI AND ANOTHER (DEFENDANTS.)\*  
*Civil Procedure Code (1908), section 65—Execution of decree—Benami purchase—Claim against certified purchaser, but not by representative of the real purchaser.*

The widow of one Bhola Nath purchased a house at a civil court auction sale in the name of her son-in-law Baldeo and incorporated it into another house left by her husband who had died sonless. On her death one of her daughters claimed the house as an heir of her deceased father. The son-in-law in whose name the house was purchased raised the plea that he was the certified auction purchaser and the suit was barred by section 66 of the Code of Civil Procedure. *Held* that as the plaintiff did not claim through the widow, but through the widow's husband, her father, the suit did not come within the purview of section 66 of the Code. *Ram Narain v. Mohanian* (1) distinguished.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are fully set out in the judgement under appeal, which was as follows :—

"In order to understand this appeal, it will be better in the beginning to set out, that one Bhola Nath had a wife, named Musammat Sundar Dei. Of these two, were born four ladies, Musammat Narain Dei, Musammat Durga Dei, Musammat Uttam and Musammat Piari. Bhola Nath died leaving his widow, and these four ladies him surviving. Musammat Sundar Dei is now dead, and the dispute relates to property which is said to be the property of Musammat Sundar Dei. It will be well to note also, that the lady, Musammat Durga Dei, married one Baldeo. In this appeal the parties are Musammat Narain Dei, who was the plaintiff in the court of first instance, Musammat Durga Dei and her husband Baldeo. The property with which this appeal is concerned, is a house situate in muhalla Mandi Said Khan in the city of Agra. This house was put up to sale by the Civil Court at Agra. It was purchased—so the sale certificate sets out—by Baldeo. The sale certificate shows that it was sold subject to a lien of Rs. 119-14-0, arising out of a deed, dated the 3rd June, 1891, of which one Ganga Prasad was the holder. Musammat Narain Dei came into court and asked for possession of this property as being part of the property left by Musammat Sundar Dei. After setting out the pedigree, she alleges that Musammat Sundar Dei, her mother, got possession of all the property left by Bhola Nath, and that in her life-time she purchased the house in dispute, adjoining the house left by

\* Appeal No. 87 of 1912 under section 10 of the Letters Patent.

(1) (1903) I, L. R., 28 All., 82.