

## REVISIONAL CRIMINAL.

1914  
May, 14,

*Before Mr. Justice Piggott.*

EMPEROR v. RAM SARUP AND OTHERS.\*

*Act No. XLV of 1830 (Indian Penal Code), section 447—Criminal trespass—One co-sharer building on common land without the consent of the other co-sharer.*

Where one co-sharer built upon a piece of common land against the will of the other co-sharer, whose consent had been previously asked and had been refused, it was held that this circumstance alone was not sufficient to render the co-sharer so building guilty of criminal trespass. *In the matter of the petition of Gobind Prasad (1) and Emperor v. Lakshman Raghunath (2) referred to.*

ONE Ram Rijpal, who was a co-sharer with Umrao Mirza in certain land in the village of Aslatpur, wishing to build a house upon a portion of the common land, asked the permission of Umrao Mirza to do so. Umrao Mirza refused his consent, but notwithstanding this Ram Rijpal a short time afterwards proceeded to erect some sort of a house upon the land in question. In respect of this building Ram Rijpal and others were prosecuted and convicted of criminal trespass under section 447 of the Indian Penal Code. They appealed, but their appeals were summarily dismissed. They thereupon filed the present application in revision in the High Court.

Mr. M. L. Agarwala, for the applicant.

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

PIGGOTT, J.—This is an application in revision against an order of the District Magistrate of Meerut, dismissing the appeals of Ram Sarup, Mutasaddi Lal and Ram Rijpal who have been convicted of an offence under section 447, Indian Penal Code, and sentenced to a fine. The case was tried by a magistrate of the third class. His judgement contains a complete statement of the facts of the case and the evidence given by various witnesses, but makes no reference throughout to the definition of "criminal trespass" as given in the Indian Penal Code. There is therefore no finding recorded as to whether the conviction in this case is for having entered on property in possession of the complainant Umrao Mirza with intent to commit an offence, or with intent to

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\* Criminal Revision No. 230 of 1914, from an order of G. K. Darling, Joint Magistrate of Meerut, dated the 27th of October 1913.

(1) (1879) I. L. R., 2 All., 465.

(2) (1902) I. L. R., 26 Bom., 558.

intimidate, insult or annoy the said Umrao Mirza. The case for the prosecution is thus stated by the magistrate at the very commencement of his judgement:—That in the village of Aslatpur plot No. 12 owned and possessed by the complainant and other co-sharers was lying waste; that the accused Ram Rijpal paid a visit to the complainant and asked his permission to build a house on the said land, which permission was flatly refused; that the complainant subsequently came to know that the three accused had built four walls on a portion of plot No. 12 aforesaid, put grass thatch on them and had commenced to tie their cattle therein and to live there themselves. I think I may infer from the judgement that these are the facts which the magistrate held to be proved. The District Magistrate on appeal was expressly invited to consider the question whether the conviction was justified, either on the evidence or in law, on the facts found. He dismissed the appeal summarily without giving any reasons. So far as I can gather, the plot of waste land in question was one which might have been entered upon by any one of the accused, in the sense that they could have walked across it in pursuance of their daily avocations, without the complainant's being entitled to raise any objection. If the conviction therefore can be maintained at all, it must be upon a finding that, when the three accused began to build the walls the subject-matter of the complaint, they were unlawfully remaining on this land with some such intent as would render them liable to punishment.

The only intent which could reasonably be argued against them would be an intent to annoy Umrao Mirza. I have been referred to one or two cases on the point, the first being the well-known authority of this Court, *In the matter of the petition of Gobind Prasad* (1), and the other being a decision of the Bombay High Court in *Emperor v. Lakshman Raghunath* (2). It must be noted that the accused Ram Rijpal is himself a co-sharer in the village, and his asking another co-sharer to consent to his appropriating to his own use a portion of a plot of waste land would not necessarily imply that the co-sharer whose consent he asked was admitted by him to be the sole owner of the plot in question. On the facts of the case and in

(1) (1879) I. L. R., 2 All. 465. (2) (1907) I. L. R., 26 Bom., 558.

1914

EMPEROR  
v.  
RAM SARUP.

view of the authorities, I do not think that the mere fact that Umrao Mirza had intimated to Ram Rijpal that he would object to the latter's building upon any portion of that land is sufficient to warrant a conclusion that the accused were acting unlawfully when they remained on his plot of land in order to set up enclosure walls, or that their intention was to annoy Umrao Mirza. Accepting this application I set aside the conviction and the sentence in the case. The fine, if paid, will be refunded.

*Conviction set aside.*

## APPELLATE CIVIL.

1914  
May, 15.

*Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.*  
BHAGWATI SARAN MAN TIWARI (PLAINTIFF) v. PARMESHAR DAS  
AND OTHERS (DEFENDANTS).\*

*Pre-emption—Practice—Alternative claims—Claim for possession as owner joined with alternative claim for pre-emption.*

There is nothing in law to prevent a plaintiff in a suit for pre-emption also setting up a claim for possession of the property as owner and his suit ought not to be dismissed on the ground that he has put his case in the alternative.

THE facts of this case were as follows :—

One Janki Saran, the father of the plaintiff, purchased a certain share in the village from one Musammat Moti Rani, a Hindu widow. A further share was acquired by Janki Saran by auction purchase in a sale in execution of a decree against the same Musammat Moti Rani. After the death of Moti Rani a person claiming to be the reversioner (Dwarka Das) sold the property to one Parmeshar, ignoring the sale by the widow and the auction sale in execution of the decree. Then the plaintiff instituted the present suit, claiming first a declaration that he was entitled to possession by virtue of the sale by Moti Rani and the auction purchase and secondly to pre-empt the property by virtue of a custom of pre-emption.

The court of first instance dismissed the plaintiff's suit on the sole ground that the plaintiff could not maintain the suit for pre-emption because he claimed a right of possession as full owner.

The plaintiff appealed to the High Court.

Munshi *Haribans Sahai*, for the appellant.

\* First Appeal No. 356 of 1913 from a decree of British Chandra Basu, Additional Judge of Gorakhpur, dated the 6th of August, 1913.