

to our minds that section 51 of the Transfer of Property Act has no application to the case at all. The defendants, if the plaintiff's case be a good one, were persons who purchased from a widow in possession of the estate either as a legatee under her husband's will or in the ordinary way as a Hindu widow, and in such a case section 51 of the Act could have no application.

Our reply to the sixth question is that the decision of the District Judge as upheld by the Commissioner was correct on two points and incorrect on the third.

As to the relief if any to which the plaintiff is entitled we would hold that the plaintiff is entitled to no relief at all and his suit ought to stand dismissed with costs in all courts.

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.

EMPEROR v. GAYA PRASAD AND OTHERS.*

Act No. XLV of 1830 (*Indian Penal Code*), section 62—Sentence—Forfeiture of property—Offences in respect of which forfeiture is a suitable penalty.

Hold that section 62 of the Indian Penal Code which empowers a court to order in certain cases the property of a convicted person to be forfeited to the Crown, should ordinarily be applied in cases of crimes against the State or affecting the safety of the public generally.

So far as they are necessary for the purposes of the present report the facts of this case are briefly as follows:—

Four persons—Gaya Prasad, *Brahmin*, Chadammi Lal, *Mallah*, Raja Ram, *Brahmin*, and Nanhe, *Bhat*—were tried before the Sessions Judge of Cawnpore on a charge under section 302, Indian Penal Code, in respect of the murder of a woman named Musamat Janki Kunwar and a boy eleven or twelve years of age named Durga. They were found guilty and sentenced to death. The Sessions Judge also, under section 62, Indian Penal Code, passed an order of forfeiture in respect of all the property of the accused Chadammi Lal. The record was submitted in due course by the Sessions Judge for confirmation of the sentences of death and the four accused also filed appeals.

* Criminal Appeal No. 157 of 1914, from an order of Austin Kendall, Sessions Judge of Cawnpore, dated the 11th of February, 1914.

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Mr. C. Dillon, Mr. C. Ross Alston, Babu Satya Chandra Mukerji and Baba Sital Prasad Ghosh for the appellants.

(The Government Advocate) Mr. A. E. Ryves, for the Crown.

MUHAMMAD RAFIQ and PIGGOTT, JJ.—In this case Gaya Prasad, *Brahmin*, Chadammi Lal, *Mallah*, Raja Ram, *Brahmin*, and Nanhe, *Bhat*, were tried before the Sessions Judge of Cawnpore on a charge under section 302, Indian Penal Code, in respect of the murder of a woman named Musammat Janki Kunwar and a boy eleven or twelve years of age named Durga. They have been found guilty and sentenced to death. The Sessions Judge has also, under section 62, Indian Penal Code, passed an order of forfeiture in respect of all the property of the accused Chadammi Lal. The record is before us for confirmation of the sentences of death and the four accused have all appealed. The case has been fully and ably argued on their behalf. The evidence on the record is voluminous, and the learned Sessions Judge has written a careful and elaborate judgement. In dealing with the matter we may consider first of all the antecedent circumstances of the parties concerned and the evidence of motive. Musammat Janki Kunwar married successively two brothers named Kesho and Manna, who were the sons of one Umrai. This Umrai was the son of one Subba Lal, and the accused Chadammi Lal is a great-grandson of the aforesaid Subba Lal. The evidence on the record shows that Kesho and Manna were co-sharers in certain landed property and also that, in consequence of certain successful litigation, a sum of Rs. 7,000, payable to Kesho and Manna in equal shares, was realized and deposited in the court of the Subordinate Judge of Cawnpore. From the time of Kesho's death there was ill-feeling and litigation between his widow Musammat Janki Kunwar and the other branch of the family, which was represented in the first instance by one Lachman another great-grandson of Subba Lal by a different line. Since the death of this Lachman the accused Chadammi Lal has acted as the head of this branch of the family. The result so far may be summed up as follows:—Kesho's share in the zamindari property seems to have been lost to Musammat Janki Kunwar altogether. Manna's share was in the possession of Chadammi Lal, although Manna's name continued to be recorded as proprietor. Of the money deposited in court, however, Musammat

Janki Kunwar succeeded in securing half (Rs. 3,500) as representing the share of her first husband Kesho. Lachman seems to have made an attempt, several years ago, to secure the other half by getting himself appointed guardian of the person and property of Manna, who was then a little under eighteen years of age. This attempt was defeated by Manna's appearance in court; but shortly after this, and before he could himself take steps to secure the money, Manna disappeared. The witness Pukhai, who is Musammat Janki Kunwar's uncle and whose evidence contains most of the facts regarding the previous history of the family, seems convinced that Manna was in fact murdered by, or at the instigation of, Lachman or Chadammi Lal. At any rate Musammat Janki Kunwar's attempt to recover the remaining Rs. 3,500 was defeated by an order of the court that the money would continue in deposit until Manna's death could be proved, or could legally be presumed by reason of his unexplained absence for a period of seven years. This period was drawing to a close at the end of the calendar year 1913. The evidence of Pukhai shows that towards the close of the year advances were made to Musammat Janki Kunwar on behalf of the accused Chadammi Lal. The accused Gaya Prasad, who is the patwari of the village of Karhwa, in which some of the family property is situated, also came forward in the matter, apparently as a friend of both parties. We think there is good evidence that this man was trusted by Musammat Janki Kunwar and had been of service to her in defeating a previous attempt to get Manna's name removed from the village papers. The position therefore was that, as soon as Manna's death could legally be presumed, Musammat Janki Kunwar might be expected to move in the matter of recovering the 3,500 rupees lying in deposit in court, and Chadammi Lal might be expected to move in the matter of getting Manna's name removed from the village papers and his own possession formally recognized. There was therefore clear ground for discussion and compromise; and at the same time it is idle for the defence to contend that Chadammi Lal had not a strong motive for putting Musammat Janki Kunwar out of his way. As regards the accused Gaya Prasad the case for the prosecution is that he had been won over by a gift of land by Chadammi Lal. He has offered an explanation

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of this matter in his defence, but we are not prepared to say that we find it proved. The other two accused, Raja Ram and Nanhe, are merely the servants of Chadammi Lal's.

[The judgement then discussed the evidence in the case and the contentions raised on behalf of the appellants and concluded as follows.]

Taking into account Nanhe's confession, along with the evidence on the record, in our opinion the learned Sessions Judge has rightly convicted the four appellants of the offence charged. The murder had been carefully premeditated and was a singularly brutal one. We are not prepared to interfere with the sentence, except as regards the order of forfeiture of Chadammi Lal's property passed under section 62 of the Indian Penal Code. It seems to us that that section should ordinarily be applied in cases of crimes against the State or affecting the safety of the public generally. Moreover, to confirm this order of forfeiture would be to punish the innocent members of Chadammi's family. We set aside this portion of the order. For the rest, we dismiss the appeals of Gaya Prasad, Chadammi Lal, Raja Ram and Nanhe and confirming their conviction and sentences direct that the latter be carried out according to law.

Appeal allowed in part.

APPELLATE CIVIL.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Chavan Banerji.

SHEO GOPAL AND ANOTHER (JUDGEMENT-DEBTORS) v. NAJIB KHAN
(DECREE-HOLDER)*

Pre-emption—Execution of decree—Decretal amount deposited, but part taken out of court by a creditor of the decree-holder, the decree for pre-emption having been set aside—Restoration of decree on appeal—Position of decree-holder.

A decree for pre-emption conditional on the plaintiff pre-emptor depositing in court by a certain date Rs. 1,000 was duly complied with. But on appeal by the vendee the decree was set aside, and thereafter a portion of the money deposited by the pre-emptor was attached and drawn out of court by a creditor who had obtained a money decree against him. The decree was, however, restored as the result of an appeal to the High Court. *Held* that the plaintiff was entitled to execute his decree upon making good the amount, which had

* Appeal No. 64 of 1913, under section 10 of the Letters Patent.

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