

1914

MATHURA  
PRASAD  
v.  
DURGA WATI.

certificate. We do not think that there was any evidence before the learned Judge to enable him to come to a decision with regard to the character of the family of the appellant and his deceased brother Gaya Prasad. Taking the application as it stands we think that it must fail. If the appellant was joint with his brother Gaya Prasad, he, the appellant, has succeeded to the estate of the deceased by survivorship, and in such a case, a certificate under Act VII of 1889 is unnecessary. The application, therefore, fails and the appeal is dismissed with costs.

*Appeal dismissed.*

## REVISIONAL CRIMINAL.

*Before Mr. Justice Piggott.*

BINDHACHAL PRASAD RAI v. LAL BIHARI RAI AND OTHERS.\*

*Criminal Procedure Code, sections 107 and 250—Frivolous or vexatious complaint—Compensation—Application to Magistrate to bind over certain persons to keep the peace.*

A person in respect of whom information has been laid before a Magistrate to the effect that he is likely to commit a breach of the peace or is otherwise liable to the provisions of section 107 of the Code of Criminal Procedure is not a person accused of any "offence". Order for payment of compensation cannot, therefore, be made against a man who has petitioned a Magistrate to take action under section 107 of the Code.

ONE Bindhachal Prasad Rai presented a petition to a Magistrate of the first class of the Gorakhpur district praying that action might be taken under section 107 of the Code of Criminal Procedure against the petitioner's brother, Lal Bihari Rai, and other persons therein named. The Magistrate heard evidence in support of the petition and came to the conclusion that there existed no grounds whatever for his taking action under section 107, and that in fact "the four accused had been wantonly and maliciously dragged into court by the complainant out of potty spite and in revenge for his own defeat in the case brought against him by Lal Bihari I." The Magistrate accordingly, purporting to act under section 250 of the Code, ordered the petitioner to pay Rs. 50 as compensation to each of the persons named in the

\* Criminal Revision No. 198 of 1914 from an order of R. T. Booth, first class Magistrate of Gorakhpur, dated the 17th of February, 1914.

petition. Against this order Bindhachal Prasad Rai applied in revision to the High Court.

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

Babu *Benode Behari*, for the opposite parties.

PIGGOTT, J.—In view of the definition of the word “offence” in the Code of Criminal Procedure it is clear that a person in respect of whom information has been laid before a Magistrate to the effect that he is likely to commit a breach of the peace, or is otherwise liable to the provisions of section 107 of the Code, is not a person accused of any offence. An order for payment of compensation cannot be made against a man who has petitioned a Magistrate to take action under section 107 of the Code. The objection is one which should have been taken before the Magistrate when the petitioner, Bindhachal Prasad, was called upon to show cause why the order under section 250 should not be made against him; but the order complained of being in my opinion illegal I cannot allow it to stand now that it has come before me in revision. I set aside the order directing Bindhachal Prasad to pay compensation to each of the four persons in respect of whom proceedings under section 107 of the Code were taken. The money, if paid, will be refunded.

*Order set aside.*

## PRIVY COUNCIL.

SHEO SHANKAR RAM AND OTHERS (PLAINTIFFS) v. JADDO KUNWAR.  
(DEFENDANT).

[On appeal from the High Court of Judicature at Allahabad.]

*Parties—Parties to suits on mortgages—Hindu joint family—Members of Hindu joint family represented by managing members of the family—Suit by members not made parties to suit to redeem property sold in execution of mortgage executed by managing members.—Act No. IV of 1882 (Transfer of Property Act), section 85.*

In this appeal their Lordships of the Judicial Committee affirmed the decision of the High Court in *Jaddo Kunwar v. Sheo Shankar Ram* (1) on the ground that the plaintiffs (appellants) who sued to redeem a mortgage after foreclosure on the plea that they had not been parties to the mortgage suit, were properly and effectively represented in the suit by the managing members

\**Present* :—Lord Moulton, Lord Parke of Waddington, Sir John Edge, and Mr. AMBER ALL.

(1) (1910) I. L. R., 33 All., 71.

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