

## APPELLATE CIVIL.

1914  
February, 17*Before Mr. Justice Ryves and Mr. Justice Piggott.*

ABDUL RAHIM KHAN (PETITIONER) v. AHMAD KHAN (OPPOSITE PARTY)\*  
*Act (Local)—1901—III (United Provinces Land Revenue Act), section 32 (d)—  
 Mahal—Land held revenue-free by the Government not of necessity excluded  
 from the mahal.*

*Held* (1) that section 32, clause (d), of the United Provinces Land Revenue Act, 1901, shows that there may be in a mahal persons holding land revenue-free, and the land so held yet forms part of the mahal, and (2) that a finding as to whether such land does or does not form part of the mahal is not a pure finding of fact but a mixed finding of fact and law

THE facts of this case were as follows :—

In the course of litigation arising out of certain partition proceedings between the parties an issue was framed as to whether a certain plot of land did or did not form part of the mahal Raipur, of village Raipur. This plot, numbered 301 and forming part of the *abadi* land, originally formed part of mahal Raipur. It appeared that the Government acquired the plot, and a police outpost was built on it. Thereupon the Government was entered in the village papers as constituting one of the proprietors of the mahal, and the plot was entered as "revenue-free." Some time later the police outpost apparently ceased to exist, and in 1876 the Government sold the plot to the parties in equal shares. The sale-deed purported to convey to the purchasers the same rights which the Government had in the land. Since then the plot was entered as owned and held revenue-free by the parties in equal shares. On the issue whether the plot now formed part of the mahal the Munsif found in the affirmative. On appeal, the District Judge was of opinion that "the Government, when it was owner of the plot, held it revenue-free; in other words, the plot became Government property and it ceased to be a part of mahal Raipur." He reversed the finding of the Munsif and remanded the case. An appeal was filed in the High Court against this order of remand.

Mr. B. E. O'Connor (with him Mr. Nihal Chand), for the appellant :—

The Government had acquired the plot as a part of mahal Raipur, and when the Government sold it, it reverted as a part of

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\* First Appeal No. 194 of 1913 from an order of E. M. Nanavatti, District Judge of Sakaranpur, dated, the 21st of July, 1913.

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that mahal; its character or nature could not be changed. The fact that the plot became revenue-free is no reason why it should cease to form part of a mahal. Revenue-free land can form part of a mahal: Section 32, clause (d), of the Land Revenue Act. As a result of the purchase from the Government the plot may be held by the parties separately from the other proprietors of the mahal; but the plot does not thereby cease to be part of the mahal. Separate specific plots may form part of a mahal.

Maulvi *Muhammad Ishaq* (with him The Hon'ble Dr. *Sundar Lal*), for the respondent:—

The finding of the District Judge that the plot is not part of the mahal is a finding of fact and should not be upset. Then, sections 141 and 142 of the Land Revenue Act lay down two characteristic features of a mahal; namely, that every portion of a mahal is liable for the revenue of the whole mahal and that every proprietor of a mahal is responsible to the Government for that revenue. When the Government became the owner of the plot and it became revenue-free, could it then be held liable for the revenue of the mahal, and could the Government be held responsible to itself? The entire constitution of that portion of land was changed when the Government acquired it. It ceased to be a part of the mahal. The acquisition by the Government and the subsequent sale by it of all rights which it had in the land altogether changed the characteristic nature of that land. It became not only "revenue-free" but free from the liability to be assessed to revenue at any time in the future. It thus ceased to be a part of a mahal.

Mr. *B. E. O'Connor* was not heard in reply.

RYVES and PIGGOTT, JJ:—This case was remanded by this Court for a decision of the issue as to whether the land in dispute formed part of the mahal Raipur. The learned Munsif, on the evidence before him, came to the conclusion that it did. He found on the evidence of the patwari that the plot in question was entered in the record of rights as a part of the *abadi* and that it had a particular number in the Khasra. It also found that the Government and other portions of land in the same mahal. On appeal the learned Judge says:—"It is obvious that the Government, when it was owner of the plot, held it revenue-free. In other words this

plot became Government property and it ceased to be a part of mahal Raipur." It has been argued that this is a finding of fact which is binding on us. In our opinion it is not a finding of fact, but is a mixed finding of fact and law. We think that the learned Judge is not right in saying that the fact that the Government was owner of this plot at one time and held it revenue-free is the same thing as that the property ceased to be a part of the mahal. Section 32, clause (d), of the Land Revenue Act shows that there may be in the mahal persons holding land revenue-free and the land so held yet forms part of the mahal. In our opinion the finding of the District Judge is vitiated by his erroneous view of law. We allow this appeal, set aside the order of the learned District Judge and restore the decree of the court of first instance with costs in all courts.

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*Appeal allowed.*

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## REVISIONAL CRIMINAL.

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February, 20.

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*Before Mr. Justice Ryves and Mr. Justice Piggott.*

SAYEDA KHATUN v. LAL SINGH AND OTHERS.\*

*Criminal Procedure Code, sections 145 and 435—Revision—Jurisdiction—Powers of High Court.*

*Held* that the High Court has no power to interfere in revision with an order passed by a Magistrate under section 145 of the Code of Criminal Procedure. *Jhingan Singh v. Ram Partap* (1) and *Maharaj Tewari v. Har Charan Rai* (2) followed.

THE facts of this case were as follows :—

The applicant sued to eject the opposite party or their predecessors in title. The Revenue Court decreed the suit and they were ejected. They wrongfully resumed possession; they were sued in the Civil Court and were again ejected in execution of that court's decree. They again usurped the field, and a suit was again brought in the Civil Court for possession of the land along with the crops that might be standing on it. The suit was decreed on the 12th of June, 1913. On an application for execution of this decree an order was passed on the 13th of August, 1913, directing the amin

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\*Criminal Revision No. 47 of 1914 from an order of Gobind Prasad, Magistrate, first class, of Moradabad, dated the 19th of November, 1913.

(1) (1908) I. L. R., 31 All., 150. (2) (1908) I. L. R., 26 All., 144.