

1917

FAKIR CHAND
v.
BABU LAL.

the courts below, and on the wording of sections 83 and 84 of the Transfer of Property Act itself this would seem to be the effect of the statute construed according to its plain meaning. The only other question raised in this appeal is as to costs. On this point we think it sufficient to say that the orders of the courts below were within their discretion and that we are not satisfied that good cause is shown for interference. The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

1917
July, 23.

Before Mr. Justice Ryves.

EMPEROR v. GHASI.*

*Act No. XLV of 1860 (Indian Penal Code), section 441—Criminal trespass—
Building on another man's land.*

A man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land, if, for example, he causes others to build on the land against the wishes and in spite of the protest of the owner of the land.

THE accused in this case was convicted by a bench of Honorary Magistrates of the offence of criminal trespass as defined in section 44 of the Indian Penal Code, in that he had caused certain buildings to be erected on another person's land in spite of the objections of the owner of the land. He appealed to the District Magistrate who dismissed the appeal. He then applied in revision to the Sessions Judge, who referred the case to the High Court, being of opinion that the offence of criminal trespass was not established, inasmuch as it did not appear that the accused had ever himself been upon the complainant's land.

The parties were not represented.

RYVES, J.—This is a reference by the learned Sessions Judge of Moradabad recommending that the conviction of one Ghasi under section 447 of the Indian Penal Code and the sentence of a fine imposed thereunder should be set aside. Ghasi was tried by a Bench of Honorary Magistrates and convicted and sentenced to pay a fine of Rs. 100. He appealed to the District Magistrate, who dismissed the appeal. The matter was then taken in revision

* Criminal Reference No. 581 of 1917.

before the learned Sessions Judge who has sent up the record with a recommendation for setting aside the conviction and sentence passed on Ghasi. In my opinion the facts as found by the learned District Magistrate in his judgement in appeal show that Ghasi was guilty of criminal trespass. The learned Sessions Judge says: "In this case there is no evidence to show that the applicant Ghasi had entered upon the complainant's land with criminal intent or that he had entered at all. Mere building of houses on another person's land, in my opinion, does not amount to criminal trespass . . . A person might build a house on another man's land without even entering on the land, and in such a case I do not see how he can be said to be guilty of criminal trespass." I do not agree with this proposition of law. It has been found by the District Magistrate on evidence that Ghasi bought a particular piece of land and began building on it, and then subsequently and in spite of warnings, he insisted on building on another separate piece of land, the property of the complainant. It seems to me that, even if he did not personally set foot on the land of the complainant, if he got people to build on it in spite of the protests of the complainant he did commit criminal trespass within the meaning of section 441 of the Indian Penal Code. I do not think it is necessary that the entry on such land should be personally effected by the accused. It might well be an entry by any agent of his under his orders. I decline to interfere. Let the record be returned.

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 EMPEROR
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Record returned.

REVISIONAL CIVIL.

Before Mr. Justice Tudlall and Mr. Justice Walsh.

ASHIQ ALI AND OTHERS (PLAINTIFFS) v. IMTIAZ BEGAM AND OTHERS

(DEFENDANTS).*

1917

 July, 30.

Civil Procedure Code (1908), section 115—Valuation of suit—Suit intentionally undervalued—Powers of Court as regards amendment of valuation—Court fee.

When a court is of opinion that a suit has been insufficiently valued and that the plaintiff has done so intentionally, it may require the plaintiff to make a fresh valuation and pay the proper court fee, but it has no power to amend the valuation itself.

* Civil Revision, No. 23 of 1917.