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of a single individual, that individual was entitled to dispose of his property to any one he pleased without it being subject to any right of pre-emption (unless the sale was made expressly subject to such right). We have already decided this same question in another case. See F. A. No. 302 of 1910, decided on the 22nd of March, 1912 (*Powell v. Powell*). In our opinion the court below was wrong in holding that a custom of pre-emption existed at the time of the sale in question. No doubt a custom might grow up again in the course of time, but there is no evidence to justify any such finding in the present case and this is not the finding of the court below. Nor can it be said that a contract between the co-sharers has been proved. In 1881 (when the latest record of pre-emption was made) the property was, as already stated, in the hands of a single proprietor. The fact that there is such a record appearing in the *wajib-ul-arz* of a *mahal* in the hands of a single proprietor is another instance that the entry in the *wajib-ul-arz* is not always trustworthy. Before finally deciding the appeal, we must refer the second issue to the court below, namely, whether the formalities required by the Muhammadan law were performed by the plaintiff, pre-emptor. This issue will be deemed to be taken in all three cases and the court will decide the issue upon the evidence already on the record.

Issue remitted.

APPELLATE CRIMINAL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.

EMPEROR v. HASHIM ALI.*

Act (Local) No. II of 1916 (United Provinces Municipalities Act), sections 185, 186—Erection of building without sanction of municipal board—Prosecution—Notice for demolition of building not necessary before prosecution.

Where it is found that a building for which the sanction of a municipal board is required has been erected either without such sanction or in contravention thereof, it is not necessary for the board to direct the demolition of the building before it can prosecute the person who has erected it.

* Criminal Appeal No. 198 of 1917, by the Local Government, from an order of F. Rustamji, Special Magistrate, second class, of Lalitpur, dated the 14th December, 1916.

THE facts of the case were as follows :—

On Hashim Ali, being the tenant of a certain shop within the limits of the municipality of Lalitpur, erected in front of the shop a tin-roofed shed. The owner of the shop had obtained the necessary sanction for the building of such a shed, but the sanction had lapsed because it had not been acted upon for the space of one year. Hashim Ali was prosecuted at the instance of the municipal board of Lalitpur, in respect of the erection of this shed, under section 185 of the United Provinces Municipalities Act, 1916, but he was acquitted because the trying magistrate held that it was incumbent upon the municipal board first to issue notice to Hashim Ali under section 186 of the Act, before they could prosecute him under section 185. Against this order of acquittal the present appeal was filed on behalf of the Local Government.

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

Babu Sital Prasad Ghosh, for the opposite party.

BANERJI and PIGGOTT, JJ. :—This is an appeal which the Local Government have felt it their duty in the public interest to file against the order of a Special Magistrate sitting at Lalitpur, who has acquitted one Mulla Hashim Ali on a prosecution alleging against him an offence under section 185 of the Municipalities Act (Local Act No. II of 1916). The allegation against Hashim Ali was that he had erected a tin-roofed shed in front of a certain shop, of which he was the tenant, within the limits of the municipality of Lalitpur, and that he had done this without obtaining the sanction of the board. The case was defended upon various grounds in the court below. It was suggested that as a matter of fact sanction had been obtained by one Chaube Chatarbhuji, the owner of the house. We have found it necessary to look into the evidence on this point. We think it is clear that on the 30th of July, 1915, the Municipal Board of Lalitpur passed a resolution which had the effect of conveying to Chaube Chatarbhuji their sanction to the erection of a shed of this description on the locality in question. Under the Municipalities Act itself, as well as under the byelaws, such a sanction would remain in force for one year. The case for the prosecution is that the building in question was erected after the expiration of one year.

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The accused endeavoured to prove that the erection had actually been commenced and completed on the 27th of July, 1916, or just within one year. It has been necessary for us to examine the evidence on this point, but we agree with the learned Magistrate that the defence evidence is unreliable. The statement of the Conservancy Darogha is corroborated by one of his own subordinates and by the fact that he actually reported the construction of this building on the 6th of August, 1916. It may be taken as satisfactory proof that the shed had in fact been erected on the 5th of August, 1916. It was also suggested in the court below, as well as here, that the construction in question was not a "building" within the definition contained in section 2, clause (2), of the aforesaid Act. We think there can be no doubt that it was a "shed" and also a "roofed structure," within the meaning of that section. As a matter of fact Chauke Chatarbhuji had applied for sanction as already stated, but the sanction had lapsed. So far everything we have said is in agreement with the view taken by the learned Magistrate. The reason why the trial in that court ended in an acquittal is that the learned Magistrate felt himself troubled by a curious question of law. He refers to the provisions of section 186 of the Municipalities Act, according to which the Board "may at any time," in a case like the present, by issuing a written notice, require any person in the position of Hashim Ali to demolish a building set up by him without the sanction of the Board, or in contravention of the terms of such sanction granted to him. The learned Magistrate has taken the view that, by reason of these provisions, it was absolutely necessary for the Municipal Board to issue a notice requiring Hashim Ali to demolish this building before they prosecuted him for having erected it. There is really nothing in the terms of sections 185 and 186 of the Municipalities Act to support this view. The powers conferred on the Board by these two sections are intended to be used in the alternative according as the necessities of a particular case may require. A building may be quite unobjectionable in its nature, and yet its erection without the previous sanction of the Board may be an offence against the law. To hold that a Municipal Board cannot vindicate its authority against such a breach of the law, without first ordering the

demolition of an otherwise unobjectionable building, is to place a forced and illiberal construction on the Statute and would lead to consequences not desirable in the public interests. In the present case, for instance, the Municipal Board had shown that it was ready to sanction the erection of a shed on the locality in question, and had actually granted sanction for the purpose, but there had been a contravention of the law on the part of Hashim Ali, in that he had allowed that sanction to lapse and then proceeded to set up this shed without giving fresh notice or submitting any fresh application to the Municipal Board. In such circumstances as this a prosecution for an offence against the Act was a more appropriate remedy than an order for the demolition of the building. We are quite satisfied that the issuing of a notice by the Board under the provisions of section 186 of the Municipalities Act, is not a condition precedent to the institution of a prosecution under section 185. The reason given by the learned Magistrate therefore for acquitting the accused in this case is unsatisfactory and his view of the law mistaken. We must set aside the order of acquittal, and in lieu thereof we record the conviction of Mulla Hashim Ali for an offence under section 185 of the United Provinces Municipalities Act. We think that under the circumstance it will be quite sufficient for us to sentence him to pay a fine of five rupees, and we order accordingly.

Appeal allowed.

APPELLATE CIVIL.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Piggott.
 MADAN GOPAL AND ANOTHER (PLAINTIFFS) v. SATI PRASAD AND
 ANOTHER (DEFENDANTS).*

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Hindu Law—Joint Hindu family—Sale of ancestral property by father without legal necessity—Sale set aside at instance of sons—Vendor not entitled to refund of consideration by sons.

A sale of the property of a joint Hindu family made by the father for an antecedent debt or for the payment of an antecedent debt

* Second Appeal No. 71 of 1916, from a decree of Piarī Lal Katara, Subordinate Judge of Mainpuri, dated the 19th of May, 1915, reversing a decree of Mubammad Nadir Husain, Munsif of Phaphund, dated the 30th of January, 1914.