

that the convictions and sentences were set aside because no permission had been given for the prosecution; in other words the court which tried that case was not a court of competent jurisdiction. This plea fails. The result is that all the legal pleas put forward fail. The application is dismissed.

Application dismissed.

1916

EMPEROR
v.
HUSAIN
KHAN.

REVISIONAL CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

DALIP SINGH (APPLICANT) v. NAWAL AND OTHERS (OPPOSITE PARTIES) *
Act (Local) No. III of 1901 (U. P., Land Revenue Act), section 18—Suit for rent before Assistant Collector—Sanction to prosecute granted by him—Officer at the time of granting sanction placed in charge of work of another sub-division of the same district—Jurisdiction.

1917
January, 8.

An Assistant Collector tried a suit under the Agra Tenancy Act, in the course of which a question as to the genuineness of a certain document tendered in evidence by the defendants arose. Subsequently to the decision of that suit the Assistant Collector was put in charge of the work of another sub-division in the same district. *Held* that such a transfer of work did not deprive him of jurisdiction to grant sanction for a prosecution in respect of the forging of the document so tendered.

THE facts of this case were as follows :—

There was a rent suit tried in the court of an Assistant Collector of the first class named Mr. Ambika Nandan Sinha, exercising jurisdiction in the Muzaffarnagar district. There was a question in that rent suit as to the genuineness of a certain receipt tendered in evidence by the defendants. The question was decided in favour of the plaintiff by the Assistant Collector, and the Assistant Collector's decision was subsequently affirmed by the District Judge in appeal. An application was then made by the successful plaintiff to the same Assistant Collector, that is to say, to Mr. Ambika Nandan Sinha, still exercising the jurisdiction of an Assistant Collector of the first class in the Muzaffarnagar district, for sanction to prosecute the three defendants in the suit for offences under sections 467, 471, 193 and 199, Indian Penal Code, in connection with an alleged false defence said to have been set up by them and the alleged forgery of the receipt on which they relied. The Assistant Collector granted sanction.

* Civil Revision No. 148 of 1916.

1917

DALIP SINGH
v.
NAWAL.

Against his order an application was made according to law to the appellate court to which the said Assistant Collector was subordinate, namely, in this matter, the court of the Additional Judge of Meerut. A variety of pleas were taken, but the Additional Judge disposed of the matter on a single point. He said that Mr. Ambika Nandan Sinha had no jurisdiction to entertain the application for sanction when it was presented to him. It appears that, in the interval between the rent suit and the presentation of the application for sanction, Mr. Ambika Nandan Sinha had, under the provisions of section 18 of the Land Revenue Act (Local Act III of 1901), been put in charge of a different sub-division of the Muzaffarnagar district.

The Additional Judge accordingly set aside the order of the Assistant Collector granting sanction. From this order the applicant for sanction applied in revision to the High Court.

Mr. *Nihal Chand*, for the applicant.

Pandit *Radha Kant Malaviya*, for the opposite parties.

PIGGOTT and WALSH, JJ. :—It appears that there was a rent suit tried in the court of an Assistant Collector of the first class named Mr. Ambika Nandan Sinha, exercising jurisdiction in the Muzaffarnagar district. There was a question in that rent suit as to the genuineness of a certain receipt tendered in evidence by the defendants. The question was decided in favour of the plaintiff by the Assistant Collector, and the Assistant Collector's decision was subsequently affirmed by the District Judge in appeal. An application was then made by the successful plaintiff to the same Assistant Collector, that is to say, to Mr. Ambika Nandan Sinha, still exercising the jurisdiction of an Assistant Collector of the first class in the Muzaffarnagar district, for sanction to prosecute the three defendants in the suit for offences under sections 467, 471, 193 and 199, Indian Penal Code, in connection with an alleged false defence said to have been set up by them and the alleged forgery of the receipt on which they relied. The Assistant Collector granted sanction. Against his order an application was made according to law to the appellate court to which the said Assistant Collector was subordinate, namely, in this matter, the court of the Additional Judge of Meerut. A variety of pleas were taken, but the Additional Judge

disposed of the matter on a single point. He said that Mr. Ambika Nandan Sinha had no jurisdiction to entertain the application for sanction when it was presented to him. It appears that, in the interval between the rent suit and the presentation of the application for sanction, Mr. Ambika Nandan Sinha had, under the provisions of section 18 of the Land Revenue Act (Local Act III of 1901), been put in charge of a different sub-division of the Muzaffarnagar district. The suggestion is that the only officer competent to entertain the application for sanction was the Assistant Collector who had taken over from Mr. Ambika Nandan Sinha the charge of the particular sub-division in question. There is nothing in the Tenancy Act (Local Act II of 1901) about a sub-divisional officer. Whatever may be the effect of transfers of work, either on the criminal side or under the Land Revenue Act, between one officer and another of equal rank in the same district, there seems no force in the objection taken in the present case. The suit under the Tenancy Act in connection with which the alleged offences were committed was a suit before Mr. Ambika Nandan Sinha, Assistant Collector of the first class exercising jurisdiction in the Muzaffarnagar district. Any transfer of work which might subsequently be made under the orders of the Collector between different Assistant Collectors in the same district could at the most affect the powers of the officer concerned under the Land Revenue Act. So far as the powers of Mr. Ambika Nandan Sinha as Assistant Collector under the Tenancy Act were concerned they remained the same, and he was for practical purposes the same court which had decided the rent suit in question. It seems therefore that the Additional Judge was wrong in the ground which he took up as the basis of his order setting aside the sanction granted by the Assistant Collector. The application before the learned Additional Judge raised a number of other points which he has declined to consider. Moreover, there is another view of the case which should have been present to the mind of the Additional Judge. He was the presiding officer of the court to which appeals lay from the decisions, either of Mr. Ambika Nandan Sinha, or of the other Assistant Collector who was alleged to have succeeded to the charge of the former's sub-division under the Land Revenue Act. It was, therefore, competent for him, from any point of

1917

DALIP SINGH
v.
NAWAL.

1917

DALIP SINGH
v.
NAWAL.

view, either to affirm or to quash the sanction which had been granted. He was seised of the case on the merits and the real question which he had to determine was whether this was a proper case in which the interest of justice required that sanction should be granted to the successful plaintiff to prosecute the unsuccessful defendants. In refusing, as he says, "to try the other issues" raised before him, the Additional Judge has declined to exercise a jurisdiction vested in him by law. We think it is a proper case to exercise the revisional jurisdiction of this Court. We accordingly allow this application, set aside the order of the Additional Judge, and direct that the application contesting the order of sanction granted by the Assistant Collector be returned to the court of the Additional Judge of Meerut, with orders that it be re-admitted on to the file of pending applications and disposed of according to law. Under all the circumstances of the case we make no order as to costs of this application.

Application allowed.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BAID RAM AND ANOTHER (DEFENDANTS) v. TIKA RAM (PLAINTIFF).*

1917
January, 8.

Act No. I of 1872 (Indian Evidence Act), section 92—Mortgage with possession—De facto substitution of other property for part of that included in the mortgage deed—Suit for redemption—Evidence.

The plaintiff mortgaged to the defendants three specific items of property for a sum of Rs. 99. The mortgage was registered, and it was a possessory mortgage, but the defendants never in fact got possession of more than one of the items mentioned in the deed. They did, however, get possession as mortgagees of another piece of property not mentioned in the deed, apparently by virtue of a subsequent oral agreement with the plaintiff and they held this piece of property in mortgagee possession for a number of years.

Held on suit by the plaintiff for redemption that the plaintiff was entitled to lead evidence to prove two facts: (1) that the possession of the defendants over the plot not mentioned in the mortgage deed was that of mortgagees and had never been adverse to himself and (2) that the right of mortgagee possession was terminated by the payment of Rs. 99 which had been duly tendered by him.

* Second Appeal No. 1772 of 1914, from a decree of Kshirod Gopal Banerji, Subordinate Judge of Budaun, dated the 20th of August, 1914, modifying a decree of Manmohan Sanyal, Munsif of Bisauli, dated the 15th of April, 1914.