

We understand this sub-section to mean that where res-titution cannot be obtained by application under sub-section (1), as is the case here, there is no bar to the institution of a suit. We thus find that the relief which has been awarded to Parbati by the lower appellate court could be legally awarded to her in a suit of the nature which she brought, and we find that on the merits she was entitled to that relief. This concludes the appeal.

With regard to the cross-objections we are of opinion that the lower appellate court has rightly decided the matter and that it has given Musammatt Parbati all the relief to which she is entitled and that it is not possible to grant her any more. For the above reasons, we dismiss the appeal and the cross-objections. The appellant will pay his costs of the appeal and those of the respondent. The respondent will pay her own costs of the cross-objections and those of the appellant.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Ryves.

EMPEROR v. UDAI RAJ SINGH.*

Criminal Procedure Code, sections 110 and 437—Security to keep the peace—Further inquiry.

1922
May, 19.

It is not intended that section 437 of the Code of Criminal Procedure should be used for the purpose of having a review of proceedings under section 110 of the Code merely because the District Magistrate happens to take a different view of the evidence which was before the trying Magistrate from that which the trying Magistrate himself took.

THIS was an application in revision from an order directing further inquiry into a case under section 110 of the Code of Criminal Procedure. The facts of the case sufficiently appear from the judgment of the Court.

Hafiz *Mushtaq Ahmad*, for the applicant.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown.

RYVES, J.:—In this case proceedings were taken against Uday Raj Singh under section 110 of the Criminal Procedure Code. The matter was inquired into by a Magistrate who heard a large number of witnesses on both sides and in a well considered judgment came to the conclusion

* Criminal Revision No. 191 of 1922, from an order of A. C. Holmes, District Magistrate of Jaunpur, dated the 7th of April, 1922.

1922

EMPEROR
v.
UDAI RAJ
SINGH.

that it was not proved that orders under section 110 of the Criminal Procedure Code should issue against Udai Raj Singh. The District Magistrate, without issuing notice, ordered further inquiry under section 437 of the Criminal Procedure Code. On revision this Court set aside that order. Notice was then sent to Udai Raj Singh, and the successor of the then District Magistrate ordered further inquiry. The reasons given really amount to this that if the trying Magistrate had taken a proper view of the evidence, that is to say, the view which the District Magistrate felt inclined to take, then he would have passed orders under section 110 of the Criminal Procedure Code. He now refers the matter back to him for further inquiry as he calls it, but really, it seems to me, with a recommendation or advice that orders under section 110 of the Criminal Procedure Code were indicated. I do not think section 437 was ever intended for a case like this. In my opinion, the trying Magistrate was quite entitled to come to the opinion which he did, and merely because another Court does not agree with that opinion, is no reason to direct the so-called further inquiry. There is no suggestion that further evidence is available or should be taken. Under these circumstances I set aside the order under section 437. If, of course, in future it becomes necessary to take proceedings against Udai Raj Singh, this will be no bar to such proceedings.

APPELLATE CIVIL.

Before Sir Grimwood Mears, Knight, Chief Justice and Mr. Justice Ryves.

1922
May, 25.

JAGANNATH AND OTHERS (DEFENDANTS) v. BALWANT SINGH AND ANOTHER (PLAINTIFFS).*

Act (Local) No. II of 1901 (Agra Tenancy Act), sections 95 and 167—Civil and Revenue Courts—Jurisdiction—Substance of dispute between the parties to be regarded and not only the mere words of the pleadings.

On the death of one L, an occupancy tenant, an application for mutation of names was made by certain persons who alleged that they were his grandsons, being the sons of G, who had been adopted by L, but had died in his life-time. Whilst these mutation proceedings were pending, the zamindars filed a suit in a Civil Court. They denied the factum and the legality of the adoption of G, and, though admitting that the applicants for mutation were tenants of some kind, alleged that they were merely non-occupancy tenants from year to year. The only relief sought was "that it may be declared that Govind was not the adopted son of Lalji and that the defendants are not the grandsons of Lalji."

* Appeal No. 25 of 1921, under section 10 of the Letters Patent.