

REVISIONAL CRIMINAL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

EMPEROR v. BIRJU MARWARI AND OTHERS.*

1921
January, 4.

Criminal Procedure Code, section 9—Jurisdiction—Additional Sessions Judge—Appeal made over to Additional Sessions Judge, but afterwards withdrawn and tried by Sessions Judge.

In the district of Gorakhpur, besides the Sessions Judge, two Additional Sessions Judges were appointed. And it was provided by a Government notification that the Second Additional Sessions Judge should try such cases as were made over to him to be tried by the Sessions Judge. A particular appeal was so made over to be tried, but, before it was dealt with, the Sessions Judge called up the appeal on to his own file and disposed of it himself. *Held* that in so doing the Sessions Judge did not act outside his jurisdiction.

THIS was an application in revision, the only question raised by which was whether the Court of the Sessions Judge of Gorakhpur had, in the circumstances, jurisdiction to hear a certain criminal appeal. The facts of the case appear from the following order made by the Single Judge before whom the application was first placed:—

LINDSAY, J.:—I admitted this application on one ground, namely, that contained in paragraph 3 of the application. A question of jurisdiction is raised in the following circumstances.

The appellants were convicted by a Magistrate under sections 147 and 149 of the Indian Penal Code and they were also bound over under section 106 of the Code of Criminal Procedure. The appeal came up in the ordinary way before the Sessions Judge of Gorakhpur. The learned Sessions Judge directed the appeal to be transferred for trial to the Court of the Second Additional Sessions Judge of Gorakhpur.

He had authority to do this under a notification which was published in April last (No. 1652/VI—1037, dated the 23rd April, 1921).

After the appeal had been so transferred and before the Second Additional Sessions Judge had time to dispose of it, the learned Sessions Judge withdrew the case, took it on his own file and decided it.

* Criminal Revision No. 527 of 1921, from an order of R. L. Yorke, Sessions Judge of Gorakhpur, dated the 2nd of August, 1921.

1921

BIRJU
MARWARI
v.
EMPEROR.

It is argued that the learned Sessions Judge, having once transferred the case to the Second Additional Sessions Judge, had no authority to withdraw the case and to dispose of it himself. I am inclined to the view that the learned Sessions Judge had no such authority, but I think it advisable that this question be referred to a Bench of two Judges for disposal. It is a matter which may easily come up again for decision, for there are numerous Judgeships in which Additional Judges are employed.

Let the case be put up as early as possible after the vacation.

The case then came up for hearing before a Bench of two Judges.

Mr. *T. N. Chadha*, for the applicants.

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

PIGGOTT and WALSH, JJ. :--In the Court of Session of Gorakhpur, as established under section 9 of the Code of Criminal Procedure, there is a Sessions Judge and there are, or have been, also two Additional Sessions Judges. There was a criminal appeal filed by Birju and others against their conviction by a Magistrate. So far as the provisions of the Code of Criminal Procedure go any one of the Judges of the Court of Session competent to exercise jurisdiction in the said court could lawfully have heard that appeal. For the convenience of the administration the Local Government had limited the powers of the Second Additional Sessions Judge to the trial of cases or appeals made over to him by the Sessions Judge. This particular appeal was made over to the Second Additional Sessions Judge, but circumstances subsequently occurred which made it more convenient for the Sessions Judge to hear the appeal himself. After proper notice to the parties he proceeded to do so. The question has been raised whether in so doing he acted outside his jurisdiction. We find nothing in the Code of Criminal Procedure to suggest that the jurisdiction of the Sessions Judge of Gorakhpur in respect of this appeal had been ousted in consequence of any arrangement which he might previously have made for the convenient disposal of the work of that Sessions Court. We

do not think this is a case of transfer. The expression used in the Notification is "made over to be tried" and section 9 of the Code of Criminal Procedure simply gives jurisdiction to all Judges and Additional Sessions Judges of each court of Session to which they may be appointed. If this appeal had been heard by a Judge who was not a Judge of the Sessions Division of Gorakhpur, section 531 of the Code of Criminal Procedure would have prohibited interference except upon the ground that a failure of justice had been occasioned by the hearing of the appeal in the wrong Sessions Division. We see no reason whatever for holding that there has been a failure of justice in this case. From one point of view it might be said that the provisions of section 531 aforesaid applied *a fortiori* to the present case. We are more inclined to hold that the absence of any corresponding provision in respect of cases tried within the same Sessions Division by a lawfully appointed Judge of that Sessions Division, whether he be the Sessions Judge or an Additional Sessions Judge, shows that the Legislature did not think that any doubt as to the jurisdiction of such Judges could arise in view of the wording of section 9 of the Code. We are satisfied that there is no cause for our interference. We dismiss this application.

Application dismissed.

APPELLATE CIVIL.

Before Mr. Justice Gokul Prasad and Mr. Justice Sulaiman.

SHEO MANGAL (DECREE-HOLDER) *v.* MUSAMMAT HULSA AND OTHERS

(JUDGMENT-DEBTORS)*.

Execution of decree—Res judicata—Estoppel—Application of doctrine of res judicata or estoppel to proceedings in execution.

A decree was passed in a pre-emption suit awarding possession to the plaintiff upon payment of Rs. 1,200 within two months. On appeal the amount payable by the plaintiff was increased by Rs. 380-15-0 and the time for payment was extended to five months from the appellate court's decree. The plaintiff deposited the amount declared by the original decree to be payable and obtained possession of the property in suit. The additional sum

* Second Appeal No. 641 of 1920, from a decree of B. J. Dala, District Judge of Allahabad, dated the 22nd of April, 1920, reversing a decree of Lal Gopal Mukerji, Judge of the Court of Small Causes, exercising the powers of a Munsif of Allahabad, dated the 26th of November, 1919.

1921

BIRJU
MARWARI
v.
EMPEROR.

1921

November, 5.