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LAL.

of the girl and I am satisfied that the defendants were liable to be sued for the return of the ornaments. I dismiss the application with costs.

Application dismissed with costs.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Iqbal Ahmad.

1926
November, 8.

BASDEO MISRA (APPLICANT) v. BADAL MISRA AND OTHERS (OPPOSITE PARTIES).*

Criminal Procedure Code, section 526—Transfer—Act (Local) No. VI of 1920 (United Provinces Village Panchayats Act)—Power of High Court to transfer a criminal case pending before a panchayat.

The High Court has power to transfer a criminal case pending before a panchayat constituted under Local Act No. VI of 1920. *Sat Narain v. Sarju* (1) and *Emperor v. Kamtapati* (2), referred to.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Munshi *Sheo Dihal Sinha*, for the applicant.

Pandit *A. P. Pande*, for the opposite parties.

The Government Advocate (*Mr. G. W. Dillon*), for the Crown.

IQBAL AHMAD, J.:—This is an application for transfer of a case under section 323 of the Indian Penal Code (*Basdeo Misra* complainant v. *Badal Misra* and others) pending in the panchayat at Sonbarsa.

A preliminary objection is taken to the hearing of this application, on the ground that a panchayat constituted under the provisions of Act VI of 1920 (United Provinces Village Panchayats Act) is not a court within the meaning of chapter II of the Code

* Criminal Miscellaneous Application No. 249 of 1926, for transfer of a case from a village panchayat.

(1) (1923) I.L.R., 46 All., 167.

(2) (1925) I.L.R., 48 All., 23.

of Criminal Procedure, and as it is not a criminal court within the meaning of that Act, section 526 of the Code of Criminal Procedure has no application, and as such this Court has no jurisdiction to transfer a case pending before a panchayat.

The matter was considered by a Division Bench of this Court in the case of *Sat Narain v. Sarju* (1). One of the learned Judges was of opinion that a panchayat constituted under the provisions of the Local Act referred to above is not a "criminal court" and as such this Court has no jurisdiction under section 526 of the Code of Criminal Procedure to transfer a case pending before a panchayat. He was further of opinion that section 22 of the Letters Patent did not vest jurisdiction in this Court to transfer a case from a village panchayat. The other learned Judge constituting the Bench was of a contrary opinion. He held that the village panchayat must be deemed to be a court for the purpose of section 22 of the Letters Patent, and as such "the High Court has power under that section to transfer any criminal proceeding pending before the village panchayat to another village panchayat empowered to take cognizance thereof."

The same question arose for consideration in the case of *Emperor v. Kamlapati* (2), and the learned Judges constituting the Bench made the following observation:—

"But as we had to consider at some length the question of the jurisdiction of this Court, we think that we should make some observations in regard thereto, though we are not unaware that those observations will be in the nature of *obiter dicta*. We should have little hesitation in coming to the opinion that a village panchayat constituted and held under

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Local Act No. VI of 1920 is a 'court' and when it is dealing with a case in regard to an 'offence' that it is a criminal court.'

Though the observations quoted above are in the nature of *obiter dicta* still they are entitled to the greatest weight.

The main reason assigned by one of the learned Judges who decided the case of *Sat Narain v. Sarju* (1) for holding that section 526 of the Code of Criminal Procedure has no application to village panchayats was that such a panchayat was not a "criminal court" within the meaning of chapter II of the Code of Criminal Procedure. In view of the observations quoted above, to be found in *Emperor v. Kamlapati* (2), the reasoning of the learned Judge who held that this Court had no jurisdiction to direct the transfer of a case of a panchayat loses much of its weight. Section 5 of the Code of Criminal Procedure prescribes that all offences under the Indian Penal Code shall be "investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained." I am not sure if this Court does not "otherwise deal with offences under the Indian Penal Code" when this Court, in the exercise of the powers vested in it by section 526 of the Code of Criminal Procedure, transfers a case from one court to another, and I am inclined to the view that by section 5 of the Code of Criminal Procedure, read with section 526 of the same Code, this Court has jurisdiction to transfer cases from village panchayats.

For the reasons given above, I am of opinion that I have jurisdiction to deal with this matter.

After going through the affidavits filed and hearing the learned counsel for the parties I have come to the conclusion that this is a fit case which

(1) (1923) I.L.R., 46 All., 167.

(2) (1925) I.L.R., 48 All., 23.

ought to be transferred from the panchayat court to some other court competent to try the same.

I direct that the case under section 323 of the Indian Penal Code (*Basdeo Misra* complainant v. *Badal Misra* and others) be transferred from the panchayat court at Sonbarsa to the court of the District Magistrate of Ballia, who will make over the case for trial to some other Magistrate subordinate to him and competent to take cognizance of the offence mentioned in the complaint.

Case transferred.

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APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

RAM DAYAL AND OTHERS (DEFENDANTS) v. SARASWATI
AND ANOTHER (PLAINTIFFS).*

1926

November, 9.

Act No. 1 of 1877 (Specific Relief Act), section 9—Suit for possession of immovable property—Suit based on a possessory title brought after six months from dispossession.

Even independently of section 9 of the Specific Relief Act, 1877, a person who has been ousted by a trespasser from the possession of immovable property to which he had merely a possessory title is not debarred from bringing a suit in ejectment on the basis of his possessory title even after the lapse of six months from the date of dispossession. *Wali Ahmad Khan v. Ajudhia Kandu* (1), followed. *Lachman v. Shambhu Narain* (2), distinguished.

This was a defendants' appeal arising out of a suit for a declaration of title and in the alternative for possession as trustees over four items of property.

The plaintiffs' case was that these properties were the private property of Salig Ram, the father

* First Appeal No. 274 of 1923, from a decree of Man Mohan Sanyal, Subordinate Judge of Agra, dated the 30th of April, 1923.

(1) (1891) I.L.R., 13 All., 537.

(2) (1910) I.L.R., 33 All., 174.