

based on the general rule of English Courts of Equity, which refuse ordinarily to adjudicate on any matter, to bind any man's interest, or to make any declaration of any man's right in his absence.

But the determination of the issues raised between the single plaintiff and the defendants in this suit does not involve the consideration of any question affecting the rights or interests of the other co-sharers in this "*shamilat*" land.

The plaintiff's case against the defendants is simply this. "I, like yourselves, have a joint undivided interest and right of enjoyment in and over every inch of this "*shamilat*" area, and I will not submit to your assumption of exclusive possession of any part of it by enclosing it with walls or otherwise. Those walls must be removed, and the land must be restored to its common condition as before."

We discern no necessity either of principle or of convenience for the joinder of the other co-sharers in such a suit, and Mr. Justice Brodhurst has pointed out some inconveniences, if not hardships, that might conceivably follow from the adoption of the contrary view. We would allow the appeal and remand the case under s. 562 of the Civil Procedure Code for determination on the merits by the lower appellate Court. The costs of this appeal to be costs in the cause.

Appeal allowed.

CRIMINAL REVISIONAL.

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Before Mr. Justice Tyrrell.

BENI NARAIN *v.* ACHRAJ NATH.

Criminal Procedure Code, ss. 145, 147—Dispute as to immovable property—Collection of rent—Joint undivided property.

A dispute existing between one of the co-sharers of an undivided estate and the lessee of another co-sharer, as to the right of the latter to collect rent, such right being denied on the ground that the lessor was not in possession of her share, an inquiry was made under Chapter XII of the Criminal Procedure Code and the lessor was declared to be in possession of her share. *Held* that the provisions of that chapter were not applicable to the dispute in question.

THIS was a case reported to the High Court for orders by Mr. R. J. Leeds, Sessions Judge of Gorakhpur, at the instance of the Magistrate of the Basti district. From the statement of the case by the Magistrate, it appeared that there was a dispute regarding

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the right of one Achraj Nath to collect rents, as lessee of one Bachhi, in six undivided villages. These six villages belonged to three persons jointly,—Bachhi, Beni Narain, and a third person not a party to the case. Beni Narain maintained that Bachhi was not in possession of her share, but that he was in possession of it. The Deputy Magistrate, Muhammad Amjad Ali, passed an order under s. 145 of the Criminal Procedure Code declaring Bachhi to be in possession of her third in each village. The Magistrate of the district observed:—“The effect of this order appears to me to be uncertain. If the third had been partitioned off, and the whole of the rents of the plot of land so partitioned off were payable to a single person, the effect (whether or not the order was legal) would be certain. But the villages appear to be undivided, and a third can hardly be regarded as ‘tangible immoveable property.’”

TYRRELL, J.—Assuming the facts as stated by the Magistrate of the district, the provisions of Chapter XII of Act X of 1882 have no reference to the matters about which Beni Narain has a controversy with the lessee of his aunt Bachhi. Nor does there seem to be such sufficient evidence of the present and imminent danger of a breach of the peace as would justify the interference of the Deputy Magistrate under s. 145 *id.* The Deputy Magistrate misunderstands and has applied the provisions of s. 147 *id.* His proceedings are cancelled.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

HAI RAM, AND OTHERS (DEFENDANTS) v. DURGA PRASAD AND OTHERS (PLAINTIFFS).*

Trust—Transfer of trust property—Purchaser without notice.

B, having been sentenced to transportation for life, presented a petition in the Revenue Court in which, stating that owned a certain zamindari estate, that he had been so sentenced, and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue registers and that of *P* be recorded in its stead. *P* sold the property, for consideration, his vendee purchasing without notice of any trust, and it was subsequently put up for sale in execution of a decree against *P*'s vendee and was purchased without notice of any trust.

* First Appeal, No. 100 of 1881, from a decree of Maulvi Nasir Ali Khan, Subordinate Judge of Mainpuri, dated the 1st June 1881.

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