

1933

ERRIGU  
DATT  
v.  
GAYA  
PRASAD

was advanced up to the date of institution of the suit by way of compensation for deprivation of the use of his money. The decree will be amended accordingly. Parties will get proportionate costs throughout.

*Appeal partly allowed.*

### FULL BENCH

*Before Mr. Justice Muhammad Raza, Mr. Justice Bisheshwar Nath Srivastava, and Mr. Justice H. G. Smith*

1933  
November, 1

MUZAFFAR HUSAIN (PLAINTIFF) *v.* SHARAFAT HUSAIN  
AND OTHERS (DEFENDANTS)\*

*Stamp Act (II of 1899), section 2(15)—Compromise decree in partition suit—Decree effecting partition, whether chargeable as a partition deed under section 2(15)*

Where by a compromise-decree passed in a partition suit a specific portion of the property is allotted to a party as his share and possession is also directed to be delivered, the decree should be treated as a final order for effecting a partition and is chargeable as a partition deed under section 2(15) of the Stamp Act. Being made by consent of parties, it is also an instrument whereby co-owners have agreed to divide property in severalty, and falls within the first part of section 2(15) and is chargeable with stamp duty under Article 45 of schedule I of the Stamp Act. *Thiruwengadathamia v. Mungiah* (1), relied on.

The Government Advocate (Mr. G. H. Thomas), for the Crown.

Mr. *Iqbal Ali*, for the plaintiff.

Mr. *K. N. Tandon*, for the defendants.

RAZA, SRIVASTAVA and SMITH, JJ.:—This is a reference under section 57 of the Stamp Act (II of 1899). The facts of the case are as follows:

Muzaffar Husain brought a suit against Sharafat Husain and others for partition of his half-share in certain houses in Pihani, in the district of Hardoi. His allegation was that the property was the joint property of the parties.

\*Civil Reference No. 1 of 1933, made by Pandit Tej Narain Misra, Chief Inspector of Stamps, United Provinces.

The defence was that the property had already been partitioned by an arbitrator appointed with the written consent of the parties.

It was a contested suit and was eventually compromised on the 29th of July, 1932. The suit was decreed in terms of the compromise on the 2nd of August, 1932. The plaintiff was decreed possession over a part of the property which was allotted to him under the compromise and the defendants were allowed to retain the remainder. The decree thus passed by the learned Subordinate Judge of Hardoi was not stamped. It was not treated as an "instrument of partition" within the meaning of section 2(15) of the Stamp Act. Had it been treated as an "instrument of partition," it ought to have been stamped as required by Article 45 of Schedule I of the Stamp Act.

The Board of Revenue has referred the following question to this Court under section 57 of the Stamp Act:

"Is the decree in question chargeable as a partition deed under section 2(15) of the Stamp Act?"

We have examined the record and heard the learned Counsel on both sides. In our opinion the question mentioned above should be answered in the affirmative. We think the decree passed by the Civil Court should be treated as a final order for effecting a partition. It is true that the decree was passed on the basis of a compromise filed by the parties, but the fact remains that it was passed in a partition suit, and had the effect of allotting a specific portion of the property to the plaintiff as his share in the property. The conclusion at which we have arrived is supported by a decision of the Madras High Court in *Thiruvengadathamiah v. Mungiah* (1). As pointed out in that case, a decree reciting a *razinamah* made by consent of parties, allotting specific properties to the several parties, and directing other parties to deliver possession, is chargeable with stamp duty under Article 45 of Schedule I as a final

1-23  
 MEZAFAR  
 HUSAIN  
 v.  
 SEARAFAT  
 HUSAIN  
  
*Raza,  
 Srivastava  
 and Smith,  
 JJ.*

(1) (1912) I.L.R., 35 Mad., 26; 12 I.C., 775.

1933

MUZAFFAR  
HUSAIN  
v.  
SHARAFAT  
HUSAIN

order effecting partition within section 2(15). Being made by consent of parties, it is also an instrument whereby co-owners have agreed to divide property in severalty, and falls within the first part of section 2(15).

We take the same view, and hence we decide the question in the affirmative.

## REVISIONAL CRIMINAL

Before Mr. Justice Muhammad Raza

1933  
November, 3

SURAJPAL AND ANOTHER (ACCUSED-APPLICANTS) v. KAMTA  
(COMPLAINANT-OPPOSITE PARTY)\*

*Criminal Procedure Code (Act V of 1898), section 106—Indian Penal Code (Act XLV of 1860), section 323—Accused convicted under section 323, Indian Penal Code—Order to find security to keep peace, if legal.*

*Held*, that the words "assault or other offences involving breach of the peace" in section 106 of the Code of Criminal Procedure, include the offence of causing hurt under section 323 of the Indian Penal Code, and so an accused convicted under that section can be ordered to find security to keep the peace under section 106 of the Code of Criminal Procedure. *Emperor v. Ramanuj (1)*, followed. *Naziruddin v. Emperor (2)*, referred to.

Mr. A. N. Mulla, holding brief of Mr. Ali Zaheer, for the applicants.

RAZA, J.:—This is an application in criminal revision under sections 435/439 of the Code of Criminal Procedure.

I have heard the applicants' learned counsel. In my opinion there is no substance in this revision. Nothing can be said in support of this revision on the merits.

The learned District Magistrate has, on appeal, passed an order under section 106 of the Code of Criminal Procedure. It is contended that that order is illegal and should not have been passed by the learned District Magistrate. This contention is not well-founded and must be overruled. As pointed out by a Bench of this

\*Criminal Revision No. 82 of 1933, against the order of Mr. Vishnu Sahai, District Magistrate of Partabgarh, dated the 23rd of May, 1933.

(1) (1926) 3 O.W.N., (Sup.) 311.

(2) (1933) A.L.J.R., 1345.