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of the house of one co-sharer has been allotted to the share of another co-sharer the presumption is that the owner of the house was to retain possession of the house. The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it." The same presumption would arise in the present case also. In the absence of anything to the contrary in the record of the partition case the defendants would under section 118 be entitled to retain it with the buildings thereon. The plaintiffs had therefore no right to dispossess them. The fact that the rent was not assessed should not deprive the defendants of their right to obtain possession of the house. The plaintiffs would however be entitled to the tree standing on the plot and also no possession of any portion of the land which may not be occupied by the buildings. With these remarks I allow the appeal with costs, and modify the decree of the lower court to this extent that the plaintiffs' suit is dismissed for possession of the land occupied by the building.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice H. G. Smith

1937
 March, 30

SITA RAM (APPLICANT) v. KING-EMPEROR THROUGH
 RAM DAYAL (COMPLAINANT-OPPOSITE PARTY)*

Criminal revision—Indian Penal Code (Act XLV of 1860), section 70—Revision—Death of applicant—Abatement—Revision against sentence of fine, whether abates by reason of applicant's death.

A revisional application against a sentence of fine would not abate by reason of the death of the applicant. Under the provisions of section 70 of the Indian Penal Code the death of an offender does not discharge any property which would, after his death, be legally liable for his debts, from liability to discharge any fine due from him.

Mr. S. S. Chaudhri, for the applicant.

Mr. G. G. Chatterji, for the opposite party.

*Criminal Revision No. 150 of 1936, against the order of W. Y. Madeley, Esq., I.C.S., Sessions Judge of Lucknow, dated the 8th of October, 1936.

SMITH, J.—This is an application in revision by two men Sita Ram and Ratan, both tambolis by caste who were convicted by a Special Magistrate of the first class under section 500 of the Indian Penal Code. Sita Ram was ordered to pay a fine of Rs.30, or in default to undergo simple imprisonment for two months. Ratan was ordered to pay a fine of Rs.30, or in default to undergo simple imprisonment for one month.

It is said that one Ram Dayal, who also is a tamboli by caste, was selling betel-leaves at a place called Bangla Bazar on the 19th of February, 1936, when Sita Ram and Ratan accused him of having stolen the betel leaves that he was selling from their "*bhit*". They took him first to Kishenpur Kauria, where they repeated the accusation before villagers, and after that they took him to a police station, where a report of theft was made. Ram Dayal, it appears, was kept in custody for a week and was then released. Afterwards he complained to a "*panchayat*" of his community, but the "*panchayat*" accepted the story of Sita Ram, with the result that Ram Dayal was punished by his caste-fellows. Afterwards he lodged a complaint against Sita Ram and Ratan under section 500 of the Indian Penal Code, and they were convicted and sentenced as has already been set forth.

The learned Magistrate did not believe that the betel-leaves that Ram Dayal was selling on the day in question were stolen, and came to the conclusion that the accused men, on account of previous enmity, had lodged a baseless and malicious report against Ram Dayal. The learned Sessions Judge of Lucknow thought that the accusation of theft against Ram Dayal was not made in good faith, and he dismissed the appeal that was preferred by Sita Ram and Ratan. This application for revision was preferred by Sita Ram and Ratan, but Ratan has since died.

It seems to me that on the findings of fact of the courts below, with which findings I see no reason to

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interfere, the two men in question were properly convicted. It is suggested in the grounds of this application that the applicants were entitled to the benefit of Exceptions 1, 8 and 9 to section 499 of the Indian Penal Code, but it is clear that on the facts found the applicants are not entitled to the benefit of those Exceptions. The point is not taken on the grounds of the application, but it occurred to me that the charge ought to have been more strictly confined to one or other of the individual occasions on which this false accusation was made against Ram Dayal, but I see no reason to think that there was any legal defect in that respect. It was really a false charge of theft made against Ram Dayal, the charge being persisted in on four different occasions.

The death of the applicant Ratan introduces a slight complication into the matter. Under the provisions of section 431 of the Code of Criminal Procedure "every appeal under section 417 shall abate on the death of the accused, and every other appeal under this chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant". There are no similar provisions in the Code as regards revisions, but the same principle would seem to apply so that a revisional application against a sentence of fine would not abate by reason of the death of the applicant. Under the provisions of section 70 of the Indian Penal Code the death of an offender does not discharge any property which would, after his death, be legally liable for his debts from liability to discharge any fine due from him. In the present case, if Ratan left any property, his heirs will be the only persons to suffer if this fine is realised, and I accordingly reduce the fine of Rs.30 passed against him to one of Rs.5. The conviction and the sentence of Sita Ram are maintained.

Application rejected.