

APPELLATE CIVIL

Before Mr. Justice A. H. deB. Hamilton

1939
December, 1

WALI MOHAMMAD KHAN AND OTHERS (DEFENDANT-APPELLANTS) v. SUBEDAR ABDULLAH KHAN AND ANOTHER (PLAINTIFFS-RESPONDENTS)*

Grove—Grove divided into several parts—Trees sufficiently numerous for whole number but one part devoid of trees—Grove whether to be considered as a whole—Zamindar, whether can sue for the part becoming devoid of trees alone.

Where a grove plot is sub-divided into several parts then if the trees become so few on one part or on two parts or on three parts that the whole number ceases to have the character of a grove, the zamindars are entitled to possession over the whole, but if the trees are sufficiently numerous for the whole number to be a grove, even if there are no trees on any one part of it, the grove-holders are entitled to retain possession. The zamindars have to sue for the whole number and they cannot sue about one part only. *Lachhmi Narain v. Kampta Prasad* (1), relied on, and *Lal Jagdish Bahadur Singh v. Ragho Ram* (2), referred to.

Mr. S. N. *Srivastava*, for the appellants.

Mr. *Hydar Husain*, for the respondents.

HAMILTON, J.:—This is an appeal by defendants against a decision of the learned Civil Judge of Partabgarh who allowed an appeal and decreed the suit of the plaintiffs.

The defendants held a grove which was numbered 219A, 219B, and 219C at the previous settlement. The land is now numbered 147/1, 147/2 and 147/3, but at the first settlement it was numbered 47 with goshas A, B and C, all being groves. One part of it ceased to have any trees and according to the plaint the defendants took possession of it and planted trees although it had ceased to be a grove and had, therefore, reverted to the defendants who were zamindars.

*Second Civil Appeal no. 104, of 1937, against the order of P. L. Bhargava, Esq., Civil Judge of Partabgarh, dated the 9th November, 1936.

(1) (1932) I.L.R., 8 Luck., 111.

(2) (1926) 3 O.W.N., 392.

The lower appellate court held that nos. 147/1, 147/2 and 147/3 must no longer be regarded as one plot because it is sub-divided into three parts and the defendants were no longer entitled to the part without trees. The lower appellate court has drawn a distinction between the present case and *Lal Jagdish Bahadur Singh v. Ragho Ram* (1), but a case more in point is *Lachhmi Narain v. Kampta Prasad* (2), the only difference between that case and the present one being that in that case the plot of land was sub-divided into two parts and in the present case it is sub-divided into three. The learned counsel for the respondents would make a further distinction in the present case in that the part in suit which no longer has any trees has been described in revenue papers as "parti qadim" while there is nothing to show how the land in *Lachhmi Narain v. Kampta Prasad* (2), was entered in the patwari's papers. I do not think that it is possible to hold that the entry "parti qadim" in a case like the present one is evidence of the possession of the zamindars and of the loss of possession of the original grove-holders. Once there were no trees on it, it was natural for the patwari to cease to record it as a grove, and if it was not cultivated the only entry that the patwari could make about it was to call it "parti". At first it might be qualified by the adjective "jadid" and in time would become entered as "parti qadim". I see no reason to differ from the view expressed in *Lachhmi Narain v. Kampta Prasad* (2) so that in the present case one must consider the whole plot no. 147. If the trees become so few, be it on one part or on two parts or on three parts that the whole number ceases to have the character of a grove, the zamindars, will be entitled to possession over the whole, but if the trees are sufficiently numerous for the whole number to be a grove, even if there are no trees on any one part of it, the defendants are entitled to retain possession. The plaintiffs had to sue for the whole number and they then had to prove that its

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present condition was such that it was no longer a grove but they only sued about one part and this they cannot do.

I, therefore, allow the appeal with costs and restore the decision of the trial court dismissing the suit.

Appeal allowed.

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

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BABU (APPLICANT) v. KING-EMPEROR (COMPLAINANT-
OPPOSITE-PARTY)*

Indian Penal Code (Act XLV of 1860), section 188—Criminal Procedure Code (Act V of 1898), sections 144 and 195—Prosecution under section 188, I.P.C. without complaint required under section 195(1)(a) Cr. P. C.—Prosecution and conviction, whether legal—Order sanctioning prosecution, whether can be treated as complaint—Order under section 144 against an individual and general public, requirements of.

Where certain persons were prosecuted under section 188, I.P.C. without a complaint as required by the mandatory provisions of section 195(1)(a) the trial and conviction are illegal and nugatory. Report to the District Magistrate and his order sanctioning the prosecution cannot be treated to be complaint. *Kali Charan v. King-Emperor* (1), and *Abdul Rahman v. Emperor* (2), relied on.

The scope of an order passed under section 144, Criminal Procedure Code against the public generally is narrower than that passed against an individual and served personally on him. Although the word "public" has not been used with the expression "particular place" in section 144(3) still the law intends not only that the particular place should be specified but also that it should be a place which is frequented or visited by the public. Case of (*Devatha*) *Sriramamurty* (3), referred to.

*Criminal Revision Applications nos. 83-84 of 1939, for revision of order of B. K. Topa, Esq., Additional Sessions Judge, of Bahraich, dated the 23rd of August, 1939.

(1) (1934) 11 O.W.N., 473.

(2) (1932) A.I.R., All., 190.

(3) (1931) A.I.R., Madras, 242.