

action in a Civil Court such as the present one is not barred by section 139A. I am in full accord with his Lordship's view expressed in that case.

On behalf of the respondent it was contended that the present suit is barred by section 258 of the Chota Nagpur Tenancy Act. That section has no application to the present case. It does not relate to an application under section 71 of the Act nor does the present suit seek to vary, modify or set aside any decision, order or decree of the Deputy Commissioner. The reliefs sought in the present suit are a declaration of the plaintiffs' right in the properties in dispute and for recovery of possession of the same not on the ground of illegal dispossession but on the ground of title. The scope of the suit is outside an application for recovering possession in a summary proceeding by an application under section 71 of the Act.

For these reasons I respectfully differ from the view taken by his Lordship Adami, J., in the case and would set aside his decision. I will, therefore, allow the appeal with costs and restore the decree passed by the Court below.

DAWSON MILLER, C. J.—I agree.

REVISIONAL CRIMINAL.

Before Jwala Prasad and Macpherson, J. J.

BASGIT SINGH

v.

KING-EMPEROR.*

1926.

CHAUDHRY
GURSARAN
DAS

c.
AKHOTRI
PARMESH-
WARI
CHARAN.

JWALA
PRASAD, J.

1926.

Dec., 12.

* *Identification of Prisoner's Act, 1920 (Act XXXIII of 1920), section 5—Thumb impression of accused person, whether may be taken in Court for purposes of comparison—Registration Act, 1908 (Act XVI of 1908), section 82(c)—Charge*

* Criminal Revision no. 699 of 1926, from an order of F. F. Madan, Esqr., I.C.S., Sessions Judge of Shahabad, dated the 22nd September, 1926, confirming an order of Babu S. P. Sahai, Magistrate, 1st class, Arrah, dated the 11th September, 1926.

1926.

BASGIT
SINGH
v.
KING-
EMPEROR.

of false personation—conviction for doing “any other Act in any proceeding under the Act.”

Where the accused was charged under section 82(c) of the Registration Act, 1908, with having falsely personated another and, in such assumed character, with having presented a document purporting to have been executed by that other for registration,

Held, that in view of the provisions of the Identification of Prisoners Act, 1920, it is not improper for the court to take finger-prints of the accused in its presence and to have them compared by an expert with the disputed finger-prints.

Superintendent and Remembrancer of Legal Affairs of Bengal v. Kiran Bala Dassi (1), followed.

Bazari Hajam v. King-Emperor, (2), *King-Emperor v. Ciramul* (3) and *Emperor v. Abdul Hamid* (4), referred to.

Probative value of the evidence of finger-print experts discussed.

In the present case the High Court held that the evidence was insufficient to prove that the accused was guilty of personation, but found that he had, in column 1 of the Thumb-impression Register kept under rule 53 of the Registration Rules, put his own thumb-impression as that of another and, therefore, that he was guilty under the latter part of section 82(c) of the Registration Act, of doing “any other act in any proceeding or inquiry under this Act.”

The registration of a document is a proceeding under the Act and the giving of a thumb-impression under rule 53 in the case of an illiterate is an act in a proceeding under the Act.

The petitioner Basgit Singh was convicted under section 82(c) of the Indian Registration Act, the charge being that on or about the 29th day of September, 1902, at Koilwar Registration office he falsely personated one Sidhu Mahto and in such assumed character presented a document, namely, a mortgage deed, dated the 20th September, 1902, for Rs. 400,

(1) (1925) 30 Cal. W. N. 375.

(3) (1923) I. L. R. 46 Mad. 715.

(2) (1922) I. L. R. 1 Pat. 242.

(4) (1905) I. L. R. 32 Cal. 759.

purporting to have been executed by Sidhu Mahto and others in favour of Chamru Singh, for registration.

Chamru Singh was father of the petitioner Basgit Singh. Sidhu was son of Tengar Mahto. He had two brothers Ramnandan and Subedar. Tengar Mahto executed four documents in favour of Chamru Singh: (1) a usufructuary mortgage deed for Rs. 500, dated the 27th May, 1897, (2) a mortgage deed for Rs. 95 (Exhibit 13), dated the 5th August, 1899, (3) a mortgage bond for Rs. 141 (Exhibit 14), dated the 3rd September, 1899, and (4) a simple mortgage deed for Rs. 197-13-6. All these bonds were rehan deeds except the last one which was a simple mortgage. After the death of Tengar Mahto, on the 9th November, 1901, his sons Sidhu Mahto, Ramnandan Mahto and Subedar Mahto executed another mortgage bond for Rs. 300 (Exhibit 15) in favour of the petitioner's father Chamru Singh. On the 27th October, 1903, Sidhu Mahto and Ramnandan Mahto executed a sale deed (Exhibit 17), for Rs. 1,000 in favour of Chamru Singh. The case of the prosecution was that the three mortgage bonds were satisfied: (1) of Rs. 500, (2) of Rs. 197-13-6 and (3) of Rs. 300. In 1921 Sidhu Mahto and Ramnandan Mahto executed another sale deed (Exhibit 1) in favour of one Akbar Ali for Rs. 1,500. By the consideration of this sale Akbar Ali was to pay off the two mortgage bonds of Rs. 95 and Rs. 141 respectively. Akbar Ali accordingly tendered to petitioner Basgit Singh and his brother Basawan Singh the said sum of Rs. 236 towards the satisfaction of the aforesaid bonds. They refused to accept the payment, contending that they had another mortgage bond of Rs. 300, dated the 9th November, 1901 (Exhibit 15), which remained unsatisfied. Akbar Ali instituted a civil suit for redemption and recovery of possession. In the civil suit the sale deed (Exhibit 17), dated the 27th October, 1903, which was executed by Tengar Mahto in favour of Chamru Singh was produced. It showed that two bonds were mentioned therein to be satisfied out of the consideration

1928.

 BASGIT
 SINGH
 &
 KING-
 EMPEROR.

1926.

BASGIT
SINGH
v.
KING-
EMPEROR.

money, namely, the rehan bond of Rs. 500, dated the 27th May, 1897, and the bond, dated the 20th September, 1902, for Rs. 400. There was no mention in the sale deed of the mortgage deeds of Rs. 197 odd and Rs. 300. The contention of Akbar Ali, the plaintiff in that case, and of Sidhu Mahto and Ramnandan Mahto, the alleged executants of the bond of the 20th September, 1902, was that that bond was a forgery and that Sidhu and Ramnandan never executed it. The Munsif held that it was not a forgery and did not allow redemption to the plaintiff unless he paid the bond of Rs. 300 which remained unsatisfied. On appeal the Subordinate Judge held that the bond set up was a forged one and that Sidhu and Ramnandan never executed it. This view was taken upon a consideration of the evidence of an expert on finger prints. The Subordinate Judge referred the matter to the Criminal Investigation Department for inquiry with the result that Ramlagan Chamar, a servant of the petitioner, was convicted for having given a thumb impression for Ramnandan Mahto. Upon further inquiry the present petitioner was put upon his trial along with one Daroga Singh who was supposed to have identified the executants Sidhu Mahto and Ramanandan Mahto before the Sub-Registrar of Koilwar. Daroga Singh was acquitted, and petitioner Basgit Singh was convicted.

The lower Courts held that the petitioner put his thumb impression in a register of thumb impressions of executants kept under rule 53 framed under the Registration Act. The form for this register was No. 8, and provided for the following columns :—

- (1) Impression of left thumb or other digit,
- (2) Name and signature of executant,
- (3) Date of impression,
- (4) Book number and document number, and
- (5) Serial number of impression.

In column (2) of this register it was stated—

1926.

“ Sahi Sidhu Mahto bakalam Daroga Singh ”

BASGIT
SINGH
v.
KING-
EMPEROR.

as being the executant of document No. 924 copied in book No. 1. In column (1) of this register was the thumb impression supposed to be of the executant Sidhu Mahto mentioned in column (2). The clerk Deoki Lal, who was examined in the case on behalf of the prosecution, wrote the name of Sidhu Mahto in column (2) indicating that this was the name given to him by the person who was said to have executed the document in question and affixed his thumb impression in column (1). The date of taking the thumb impression as mentioned in column (3) was the 29th September, 1902. The entries in question in the register referred to above were, therefore, in respect of the document in question. The original document was not produced, and the Court was not informed where it was. A copy of that document was made in the register of documents provided for by the Registration Act and that register was produced before the High Court. It showed that the document in question was presented before the Sub-Registrar on the 29th September, 1902, at the Koilwar Sub-registry office by Sidhu Mahto who was said to have signed the endorsement of presentation by the pen of Daroga Singh. The Courts below found that the thumb impression in column (1) of the register of thumb impressions referred to above was that of the petitioner. This finding was based upon the evidence of an expert on finger prints who arrived at the conclusion by comparing the thumb impression in question in the register with the thumb impressions Exhibits 2, 3, 4, 5 and 6. There was direct evidence given with respect to the thumb impression (Exhibit 3) as being that of the petitioner Basgit Singh. That was a thumb impression given by him upon a registered bond of 1906. Witness Badruduza said that the thumb impression was given by accused Basgit Singh in his presence upon that document. The thumb impressions (Exhibits 4, 5 and 6) also appeared to be of

1926.

BASGIT
SINGH
vs.
EMPEROR.

Basgit Singh, though there was no direct evidence of his having given those thumb impressions.

Sir Ali Imam (with him *B. P. Sinha*), for the petitioner.

H. L. Nandkeolyar, Assistant Government Advocate, for the Crown.

JWALA PRASAD J., (after stating the facts set out above, proceeded as follows:)

Sir Ali Imam on behalf of the petitioner contends that the evidence of the expert is insufficient to prove the identity of the petitioner with the man who gave the thumb impression in column (1) of the register, and he has referred to the decision in the case of *Bazari Hajjam v. King-Emperor* (1). In that case the accused was convicted under section 82(c) and (d) of the Registration Act. The charge against him was that a document registered by the Sub-Registrar of Koilwar was not in fact executed by Ram Prasad but was executed by the accused Bazari Hajjam who represented the alleged executant Ram Prasad who placed his thumb impression upon the document. In that case the thumb impression of the accused was taken in the Magistrate's Court as well as in the Court of Sessions by a finger print expert who upon a comparison of those thumb impressions with the one on the document in question found that the three impressions were identical. The conviction of the accused was based upon the evidence of the expert. Their Lordships (Das and Bucknill, JJ.), deprecated the practice of obtaining thumb impression of an accused person in the manner set forth and held that it was improper to convict an accused person on the sole testimony of a finger print expert.

Recently, in the case of *Superintendent and Remembrancer of Legal Affairs of Bengal v. Kiran Bala Dassi* (2), Ghose and Duval, JJ., referred to

(1) (1922) I. L. R. 1 Pat. 242.

(2) (1925) 30 Cal. W. N. 373.

section 5 of Act XXXIII of 1920 and to section 45 of the Evidence Act and held that the taking of a thumb impression of an accused person in the manner that was done in the present case was permitted by section 5 of Act XXXIII of 1920 and that the opinion of the expert formed by a comparison of such thumb impressions is admissible in evidence. Their Lordships observed: "It would therefore follow that the procedure which was adopted by the Magistrate was one in strict accordance with the provisions of the law and that the learned Sessions Judge was not correct in saying that the thumb impression of Kiran Bala Dassi which had been taken in Court was one which had been taken illegally and against a fundamental principle of law. That being so, it is impossible to resist the conviction that the thumb impression which had been put on the deed at the time of the registration of the document was one which had been put not by Sindhu Bala Dassi but by Kiran Bala Dassi; in other words, we are satisfied on the evidence that it was Kiran Bala Dassi who had personated Sindhu Bala Dassi at the time of the registration of the document." With this observation their Lordships convicted the accused in that case.

Similar was the view taken in the case of *King-Emperor v. Virammal* (1). In that case the decision by this Court in the case of *Bazari Hajjam v. King-Emperor* (2) as well as of the Calcutta High Court in *Emperor v. Abdul Hamid* (3) were considered. In that case, *King-Emperor v. Virammal* (1), their Lordships observed that a Court cannot refuse to convict a person on the evidence of a finger print expert, merely on the ground that it is unsafe to base a conviction upon such evidence. If the finger prints are clear enough, the Court must verify the evidence of the expert by examining them with a

1926.

 BASGIR
SINGH
v.
KING-
EMPEROR.

 JWALA
PRASAD, J.

(1) (1923) I. L. R. 46 Mad. 715.

(2) (1922) I. L. R. 1 Pat. 242.

(3) (1905) I. L. R. 32 Cal. 755.

1926.

BASGIT
SINGH
v.
KING-
EMPEROR.

I WALIA
FRASER, J.

magnifying glass if necessary, and applying its own mind to the similarities and dissimilarities afforded by the finger prints, before coming to a conclusion one way or the other. In that case the finger prints or the thumb impressions were in the light of the aforesaid remarks examined by their Lordships and they differed from the opinion of the expert and did not consider it safe to convict the accused.

It seems to me that it is not now open to contend that it is wrong on the part of the Court to take finger prints of the accused in its presence and to have them compared by an expert with the disputed finger prints. The question has been solved by legislation (Act XXXII of 1920).

As to the probative value of the opinion of an expert on finger prints, it must have the same value as the opinion of any other expert, such as a medical officer, etc. In each case the evidence is only a guide to the Court to direct its attention to judge of its value. The Court is at liberty to use its own discretion and to come to a conclusion either in affirmance or differing from the view taken by the expert. In this view it may be said that, as has been held repeatedly in a number of cases, that it is not safe to convict an accused upon the sole testimony of an expert. The danger of such a conviction has also been indicated in the decision of the Madras High Court referred to above. Each case, however, must depend on its own circumstances.

The question, therefore, at issue in the present case is whether there is sufficient evidence direct or circumstantial to enable us to say with reasonable certainty that Basgit Singh accused is the person who put his thumb impression in column (1) of the register in question.

I have considered the case very carefully and in the circumstances of the present case I do not think

that we can reject the evidence of the expert. The circumstances afford ample corroboration of the expert's opinion. Sidhu and Ramnandan have not been shown to have borne any grudge or enmity against the petitioner before us. All that we know is that the family of the accused and of Sidhu Mahto were on amicable terms and they had monetary transactions between them. The accused's father and after him he himself seemed to be always ready to help Sidhu and his family in times of pecuniary needs. No less than five mortgage bonds were executed by Tengar Mahto, father of Sidhu Mahto and Ramnandan Mahto in favour of Chamru Singh. They executed sale deeds, one in favour of Chamru in 1903 and another in favour of Akbar Ali in 1921 in order to pay off the debts covered by the mortgage bonds. There is nothing to indicate why having admitted five of the bonds they would refuse payment of the bond in question, dated the 20th September, 1902, and deny the execution thereof altogether. On the other hand, accused Basgit and his brother Basawan might have apprehended that the land which was in their possession under a usufructuary mortgage from 1897 might slip out of their hands. There might thus be pecuniary object in their minds in forging the document in question in order to augment the liability of Sidhu and Ramnandan and thus to prevent redemption of the lands in their possession.

Thus, whereas on one side, that is, on the side of the accused we find a motive for fabricating the bond in question, on the side of Sidhu and Ramnandan there is absence of any motive for denying the bond if it were genuine. It is but natural that the persons in whose favour the document in question was executed would be the persons in the Koilwar registry office, particularly when Sidhu and Ramnandan, the executants of the bond, were not there, and that fraud and forgery in their names had to be committed in order to pass successfully through the registration of

1926.

BASGIT
SINGH
v.
KING-
EMPEROR.

JWALA
PRASAD, J.

1926.

BASGIT
SINGH
v.
KING-
EMPEROR.

JWALA
PRASAD, J.

this document. Therefore, Basgit Singh and Basawan Singh who were the beneficiaries under the bond in question would naturally be the persons in the registry office and without their participation it was not possible to consummate the forgery of the document. One of them, therefore, either Basgit Singh or Basawan Singh must have presented the document in question and also put the thumb impression in column (1) of the register. The question is which of them did so? The thumb impression has been proved to be not similar to the thumb impression of Sidhu Mahto. The opinion of the expert is that it is similar to the thumb impression of Basgit.

The case of the accused is that the bond in question was satisfied by means of the consideration of the kabala (Exhibit 17), dated the 27th October, 1903. Along with it the bond of Rs. 500, dated the 27th May, 1897, must also have been satisfied and, in fact, it is case of both sides that it was satisfied. That bond is not produced. The complainant would have produced it if he had been in possession of it. As it was a usufructuary mortgage and as the consideration was paid out of it, it seems that this bond must be in the possession of the accused. In order to keep his lien alive it may have contained endorsement of payment or a mark of payment by tearing it off; but the document returned and paid off out of the consideration money remains in the hands of the creditor who pays the money as a proof of such payment. The document for Rs. 197-13-6 has also not been produced.

Therefore, the case of the prosecution that the document in question was with the accused and that he has withheld its production in order to prevent the detection of forgery must be held to be true. *

I, therefore, in concurrence with the view of the Courts below hold that the thumb impression in column (1) of the register is that of the petitioner. This proves that he gave the thumb impression in that register calling himself Sidhu Mahto as witness Deoki

Lal says who write it in column (2). Whether he presented the document or not, I am not sure that the evidence necessarily connects him with it. It is highly probable that he did so, but the presentation of a document is an incident quite apart from putting a thumb impression of the executant in column (1) of the register. The two take place at different places though in near proximity. A number of persons were present who were interested in the passing through of the document in question and Daroga Singh is said to have signed for Sidhu Mahto in column (2). There is, to my mind, a link missing which would necessarily connect the petitioner with the presenter of the document.

1926.

BAGBIT
SINGH
v.
KING-
EMPEROR.

JWALA
PRAŠAD, J.

The charge in the present case is that the petitioner personated Sidhu Mahto and in that assumed character he presented the document in question for registration. That charge to my mind is not proved inasmuch as the evidence is not conclusive as to his having presented it.

This brings up to the consideration whether the petitioner committed any offence under section 82, clause (c), of the Registration Act by having personated Sidhu Mahto before the clerk Deoki Lal and putting his own thumb impression for Sidhu Mahto in column (1) of the register. The learned Assistant Government Advocate contends that this would bring him under the latter provision of the section which runs as follows:—

“ Falsely personates another, and in such assumed character presents any document, or makes any.....statement.....
.....or does any other act in any proceeding or enquiry under this Act.” •

I have quoted only as many words of the section as are necessary for the purpose of this contention. Sir Ali Imam also agrees with this contention. It seems, therefore, that the registration of a document is a proceeding under the Act and the giving of a

1926.

BASGIT
SINGH
v.
KING-
EMPEROR.

JWALA
PRASAD, J.

thumb impression under rule 53 in the case of an illiterate person forms an act in a proceeding under the Act. Therefore, that fact alone, namely, the putting of the thumb impression by the accused in column (1) in order to facilitate registration of the document will be an offence committed under section 82, clause (c) of the Act.

The question then is whether the accused will be prejudiced by his conviction for it instead of for presenting the document in an assumed character as is set forth in the charge. The whole case of the prosecution from the beginning is based upon the putting of the thumb impression in column (1) of the register and the accused had, therefore, full notice of the charge against him and the evidence that was given in support of that charge. Therefore the accused will not in any way be prejudiced by his conviction under the latter portion of clause (c) of section 82 of the Registration Act.

I would, therefore, uphold the conviction of the petitioner and reduce the sentence to six months' rigorous imprisonment.

The Court would like to place on record its appreciation of the work done by the Criminal Investigation Department in detecting the offence.

MACPHERSON, J.—I agree to the order proposed. No point of law arises. It is also not shown that the findings on the facts of the appellate Court are wrong. Indeed the examination of the facts before us has served to show that the conclusions thereon of the learned Sessions Judge are entirely correct. I should myself have had no serious difficulty in holding that it is a legitimate inference from the facts proved in the case that the petitioner presented the mortgage deed in question for registration. But in all the circumstances I am not prepared to say that the order proposed does not adequately meet the case.