

It is also to be remembered in this connection that some of the maliks of tauzi no. 3801 and 3803 of Jagdishpur Baili are also maliks of Jangi Pakahi and it was never their case that the lands appertained to the village Jangi Pakahi. In our opinion, therefore, on the evidence on the record it may be safely held that the plaintiffs have been in undisturbed possession of the land in dispute at least since the cadastral survey and are, therefore, entitled to succeed in the suit. It is said that the plaintiffs did not set up a case of adverse possession in the plaint, but they have sued for a declaration of their title and they can establish their title in any way open to them under the law.

In our opinion this appeal ought to be dismissed with costs, the hearing fee being divided between two sets of the contesting respondents.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Courtney Terrell, C.J.

SHEIKH GULZAR

v.

KING-EMPEROR.*

1933.

RAI
BAHADUR
RADHA
KISHUN
v.
SHYAM
DAS.

FAZL ALI
AND
ROWLAND,
JJ.

1933.

October, 16.

Sentence—High Court, how far should interfere in revision.

Unless there is something that is manifestly wrong with the sentence, unless it is clearly out of proportion to the offence, if it is within the jurisdiction of the magistrate and he has exercised his discretion, no interference in revision should take place.

Observations on the danger of constant interference with sentences passed by magistrates in petty cases.

* Criminal Revision no. 438 of 1933, against an order of V. K. B. Pillai, Esq., I.C.S., District Magistrate of Saran, dated the 6th August, 1933, modifying an order of Babu B. C. Sinha, Sub-Deputy Magistrate of Siwan, dated the 20th July, 1933.

1933.

SHEIKH
GULZAR
v.
KING-
EMPEROR.

The facts of the case material to this report are stated in the judgment of Courtney Terrell, C.J.

S. N. Sahay and R. S. Lall, for the petitioner.

No one for the opposite party.

COURTNEY TERRELL, C.J.—This criminal revision has been admitted for consideration of the sentence only. To my mind it is a useful illustration of the class of case in which the High Court should not meddle with the discretion of the magistrate. The circumstances are as follows:—There was a man Dholan Dhunia who was entertaining some guests. They were sitting on a charpai outside his house. The party of five Sheiks came by and were annoyed because the Dhunias would not respectfully rise while they were passing. Upon the protest of the complainant the Sheiks set upon him and beat him, dragged him into the *osara* of the man Gulzar who is the first of the five Sheiks in the list and extracted some money from him by way of fine for an affront to what they considered their dignity. It appears that Ekbal and Hussain, the second and third of the Sheiks took part in the beating and, as I have said, it was to Gulzar's *osara* to which the complainant was dragged and there beaten and money taken from him.

The magistrate before whom the matter first came sentenced each of the accused to two months' rigorous imprisonment and a fine of Rs. 30. The District Magistrate before whom the matter came in appeal considered that Gulzar, Ekbal and Hussain were the principal offenders and did not disturb the sentences passed upon them. In the case of the other two accused he reduced the sentences to the period of imprisonment already undergone and a fine of Rs. 10 each.

No reason has been shewn to me for interfering with this decision and this is not the class of case in which this Court should exercise revisional powers.

If the authority of a magistrate is to be constantly disturbed by interference with sentences passed in petty cases magistrates will be afraid to exercise any discretion whatever. Indeed they will be driven to the course, which I have seen taken in some cases, of passing sentences heavier than would normally be the case in the anticipation that the High Court, yielding to an apparently irresistible temptation to meddle, will reduce the sentences. Such a situation is deplorable and should not be encouraged. Unless there is something that is manifestly wrong with the sentence, unless it is clearly out of proportion to the offence, if it is within the jurisdiction of the magistrate and he has exercised his discretion, as he clearly has in this case, no interference in revision should take place. This application is dismissed.

1933.

SHEIKH
GULZAR
v.
KING-
EMPEROR.

COURTNEY
TERRELL,
C. J.

Rule discharged.

APPELLATE CIVIL.

Before Kulwant Sahay, J.

1933.

(On a difference of opinion between Wort and Fazl Ali, JJ.) *March, 28.*

GANPAT PUJARI

v.

KANAIYALAL MARWARI.*

Code of Civil Procedure, 1908 (Act V of 1908), section 92—nature of reliefs contemplated by the section—suit for declaration that the thakurbari was public property—reliefs for eviction of defendant as pujari and for permanent injunction—defendant not treated as trustee—suit, whether maintainable in ordinary civil court.

The suit contemplated by section 92 of the Code of Civil Procedure, 1908, must be for one or other of the reliefs set out in clauses (a) to (h) of the first sub-section.

* Appeal from Appellate Decree no. 341 of 1930, from a decision of Babu Gajadhar Prasad, Subordinate Judge of Manbhum, dated the 20th February, 1929, affirming a decision of Babu Naresh Chandra Roy, Munsif of Dhanbad, dated the 26th July 1927.