REVISIONAL CRIMINAL.

1935.

November, 18, 19.

Before James and Saunders, JJ.

RAGHUNATH SINGH

v.

KING-EMPEROR.*

Evidence Act, 1872 (Act 1 of 1872), sections 40 to 43—ex parte decree for confirmation of possession, if conclusive evidence of possession—recitals in judgment, how far admissible.

A decree for confirmation of possession cannot be regarded as conclusive proof that the party was in possession on the date of the decree.

Kishori Jha v. *Anand Kishore Jha*(1), doubted.

A judgment was generally speaking only admissible to show its date and its legal consequences.

Trailokyanath Das v. *Emperor*(2), referred to.

Obiter: If the decree had been for delivery of possession followed by execution, the proof of formal delivery of possession might be treated as conclusive proof in favour of the successful plaintiff.

The facts of the case material to this report are set out in the judgment of James, J.

B. P. Jamuar, for the petitioners.

Jaleshar Prasad, for the opposite party.

JAMES, J.—The names of Baldeo Rai and Kapildeo Rai were entered in the record-of-rights in respect of certain land to which Suchit Singh laid claim. There was a dispute which led to proceedings under section 144 of the Code of Criminal Procedure in which Suchit Singh was unsuccessful. Suchit

*Criminal Revision no. 533 of 1935, from an order of S. K. Das, Esq., I.C.S., Sessions Judge of Saran, dated the 18th September 1935, affirming the order of Rai Sahib Pushkar Thakur, Subdivisional Magistrate of Chapra, dated the 23rd July 1935.

(1) (1928) 10 Pat. L. T. 862.

(2) (1931) I. L. R. 59 Cal. 136.

Singh then instituted a suit in the court of the Munsif of Chapra praying for declaration of title in respect of this land and for confirmation of possession and in the alternative for recovery of possession. On the 18th February, 1935, the Munsif decreed the suit making the declaration prayed for finding that Suchit Singh was in possession, and decreeing what he called confirmation of possession. On the 1st of April, 1935, Ramdahin Singh, son of Kapildeo Rai was reaping the crop on this land when he was attacked by Suchit Singh who was accompanied by a number of men. Suchit Singh ordered Ramdahin to leave the land; and on his refusing to comply with this order he and his men were attacked by Suchit Singh's party, and a fight ensued, in the course of which grievous hurt was caused to Harnandan, one of Ramdahin's men, and several other persons were less severely injured on each side. On these facts Suchit Singh and the men of his party were convicted by the Subdivisional Magistrate of offences punishable under section 147 and section 323 of the Indian Penal Code, four men being convicted of offences punishable under section 148 and section 324 or section 326. The appeal of the petitioners was dismissed by the Sessions Judge of Saran.

In the trial court and in the court of appeal, there was necessarily much discussion of the question of possession. Both courts found that actual possession was with Kapildeo's family. Mr. Jamuar on behalf of Suchit Singh and the other petitioners argues that the courts ought not to have arrived on such a finding in face of the decision of the Munsif of the 18th of February, 1935, which was a finding of a competent court to the effect that possession was with Suchit Singh; but the effect of that decree confirming possession was merely to bar a suit for declaration of title on the part of Kapildeo Rai. The decree could not be of service in any other way to Suchit unless he actually was in possession at the date when it was passed, because in the form in which he obtained his

1935.

RAGHUNATH SINGH v. KING-EMPEROR.

JAMES, J.

decree, he could not enforce it to recover possession if he was himself out of possession. So far as Kapildeo Rai and his family were concerned, the effect of the decree was to make it impossible for them to sue for declaration of title; but if at the time when the judgment was pronounced they were in possession of the land, this decree would not in itself have the effect of dispossessing them; nor any other effect than that of barring a suit. The learned Sessions Judge remarked that it was unfortunate that the decree was one of confirmation and not for recovery of possession and that fact is sufficiently clear. The decree was apparently, so far as we can judge from the discussion of evidence in the court of the Sessions Judge and the Magistrate, based on wrong conclusions, since Suchit was not actually in possession of the land; and the result is that Suchit Singh can only enforce his decree by means of self-help, and practically speaking his opponents can only prevent it by exercising the right of self-defence, since they would not likely be successful in any action which they might take in the Civil Court in consequence of acts of trespass committed by Suchit Singh.

Mr. Jamuar suggests that the decree should have been treated as conclusive proof of the fact that Suchit Singh was in possession at the date when judgment was pronounced; but there appears to be nothing in those sections which relate to the use of evidence in judgments (sections 40 to 43 of the Indian Evidence Act) which would justify that argument; and indeed it would actually appear that these judgments in the present proceedings could not be properly used as evidence of possession at all. Mr. Jamuar relies upon the decision of a single Judge of this Court in *Kishori Jha* v. *Anand Kishore Jha*(1) where it was held in dealing with proceedings under section 145 of the Code of Criminal Procedure that an ex parte decree for confirmation of possession made more than four years before the date of the proceedings under

(1) 1928) 10 Pat. L. T. 862.

section 145 necessitated the presumption that on the date of that decree, the party who was successful in obtaining it was in possession of the land. With due respect to the learned Judge who decided that case, we find it difficult to agree that the decree for confirmation of possession could be regarded as conclusive proof that the party was in possession on the date of the decree, although in a case under section 145, since that decree presumably declared title the presumption that possession followed title might possibly have had some force in the state of the evidence in that particular case. The question of how far a judgment of the court can be used as substantive evidence of the correctness of its finding was discussed in the Calcutta High Court in *Trailokyanath Das* v. *Emperor*(1) where it was pointed out that a judgment was generally speaking only admissible to show its date and its legal consequences. In the present case if the decree had been for delivery of possession followed by execution, the proof of formal delivery of possession might well have been treated as conclusive proof in favour of the successful complainant; but where there has been no execution, and all that exists is a simple declaratory decree, I doubt whether the opinion of the Munsif on this matter of possession should have any weight at all with a Criminal Court which has to decide the question on the evidence before it. The learned Sessions Judge as he says has treated the judgment of the Civil Court as evidence entitled to great respect; but I am doubtful whether he did not attach too much weight to it, and I have no doubt in my mind that the decision cannot be challenged on the ground that the weight which he attached to this opinion of the Munsif was less than that required by law.

The petition of Moti Singh who has been bound over for six months under section 562 of the Code of Criminal Procedure may be dismissed. The rest of the petitioners must execute bonds under section 106

(1) (1931) I. L. R. 59 Cal. 136.

1935.

RAGHUNATH SINGH v. KING-EMPEROR.

JAMES, J.

of the Code each in one hundred rupees with one surety of Rs. 100 to keep the peace for one year, in default of which they will suffer simple imprisonment for that period. The substantive sentences on Raghunath Singh, Jitan Singh, Ramdutt Singh and Suchit Singh will be reduced to four months' rigorous imprisonment each, and those on the remaining petitioners with the exception of Moti Singh, to sentences of two months' rigorous imprisonment.

SAUNDERS, J.—I agree.

Order accordingly.

REVISIONAL CIVIL.

1935.

November, 21.

Before Agarwala and Varma, JJ.

MAHANTH RAGHUNANDAN GIR

v.

GOSAIN DEORAJ GIR.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 115—*Court-fee—Decision that court-fee paid was sufficient, if revisable—Interlocutory order—revision.*

The plaintiff sued for certain reliefs and paid a court-fee of Rs. 15 as in a suit for a mere declaration of title. The Subordinate Judge overruled the defendant's objection that the court-fee paid was insufficient.

Held, that the order was not revisable. The general practice of the High Court is not to interfere in revision with interlocutory orders unless in exceptional circumstances when such order may result in irreparable injury to one or other of the litigant parties. An order permitting a suit to proceed does not injure the defendant as, ordinarily, his costs are payable by the plaintiff if the suit fails.

*Civil Revision no. 117 of 1935, from an order of Babu B. N. Das, Subordinate Judge, 2nd Court, Gaya, dated the 15th January, 1935.