

1921

MUHAMMAD
HANIF
v.
RATAN CHAND.

bring a declaratory suit on any and every possible invasion of his title, and such suits are not encouraged by the Court unless they are clearly necessary. When the fresh proceedings for partition began in 1914, and the defendant denied plaintiff's title to a share in the *shamilat* appertaining to *khata* No. 75 in plots *jim* and *sin* of the *shamilat*, there was a fresh invasion of the plaintiff's title, which, in our opinion, gave him a fresh cause of action. The reason why he brought no suit at the time of the partition proceedings of 1895 was doubtless that the area then involved was very small. But now that the defendant's action threatens to deprive him of his share in the rest of the *shamilat*, he is entitled, upon the fresh cause of action, to bring a suit for a declaration.

In our opinion, the decision of the lower Appellate Court is right and we dismiss the appeal with costs.

Appeal dismissed.

MISCELLANEOUS CRIMINAL.

Before Mr. Justice Martineau.

GHULAM MUHAMMAD AND OTHERS (ACCUSED)—

Petitioners,

versus

THE CROWN—*Respondent.*

Criminal Miscellaneous No. 108 of 1921.

Criminal Procedure Code, Act V of 1898, sections 342 (4) and 526—application for transfer—whether an affidavit by the accused can be accepted in support of his application for transfer.

Held, that the provision in section 342 (4) that no oath shall be administered to the accused has reference only to the statement made by him in answer to questions put by the Court in accordance with sub-section (1) of that section. It does not preclude him from making an affidavit in support of an application for transfer under section 526.

Queen-Empress v. Subbaya (1), In the matter of Barkat, (2), and Emperor v. Bindeshri Singh (3), not followed.

(1) (1889) I. L. R., 12 Mad. 451

(2) (1897) I. L. R. 19 All. 200.

(3) (1908) I. L. R. 28 All. 331.

1922

Jan. 3.

Petition for transfer of the case from the Court of Pandit Manmohan Nath, Magistrate, 1st Class, Khushab, District Shahpur.

M. SLEEM, for Petitioners.

JAI LAL, Assistant Legal Remembrancer, for Respondent.

MARTINEAU, J.—A preliminary objection is taken by Mr. Jai Lal on behalf of the Crown that the *affidavit* of the accused Ali Ahmad which has been filed in support of the application for transfer is not a proper *affidavit*, on the ground that the accused could not be prosecuted in respect of any false statements that it may contain. Mr. Jai Lal has cited *Queen-Empress v. Subbayya* (1), *In the matter of Barkat* (2), and *Emperor v. Bindeshri Singh* (3), and he relies mainly on the last of these rulings, in which it was held that when an accused person applies for the transfer of a case pending against him, supporting his application by an *affidavit*, he cannot, or at least ought not to, be prosecuted under section 193, Indian Penal Code, in respect of statements made therein. I cannot agree with the contention. The provision in section 342 (4) of the Criminal Procedure Code that no oath shall be administered to the accused evidently has reference only to the statement made by him in answer to questions put by the Court in accordance with sub-section (1) of that section. It does not preclude him from making an *affidavit* in support of an application for transfer under section 526, and I do not see that there would be any bar to his being prosecuted under section 193, Indian Penal Code, for making a false statement in such an *affidavit*. I hold therefore that the *affidavit* is one that satisfies the requirements of section 526.

No sufficient reason, however, has been shown for transferring the case from the Sub-Divisional Magistrate's Court. The only material portions of the *affidavit* are paragraphs 3 and 7, and the report received from the Magistrate is a sufficient answer to the allegations made. I dismiss the application.

Application dismissed.

(1) (1889) I. L. R. 12 Mad. 451.

(2) (1897) I. L. R. 119 All. 300.

(3) (1906) I. L. R. 28 All. 331.