

circumstances *Radhabai v. Anantrav Bhagvant Deshpande*⁽¹⁾ can still be regarded as an authority is a question which may have to be considered when those circumstances are before us. It seems to me, therefore, clear that the defendants in the present case cannot assert that they have by twelve years' adverse possession acquired a right to hold the property at a fixed rent. I should like further to point out that there is an error in the judgment of the District Judge as to the date on which the suit was filed. The correct date is October 29, 1919, and not October 29, 1921, and therefore the suit was within twelve years from the death of the last holder.

Decree reversed.

J. G. R.

(1) (1885) 9 Bom. 198.

CRIMINAL REFERENCE.

Before Mr. Justice Marten and Mr. Justice Pratt.

In re MARUTI VITHU².

Criminal Procedure Code (Act V of 1898), section 435—District Magistrate—Calling for record—Jurisdiction—Inferior Court—Compromise, record of.

Where a District Magistrate, acting under section 435 of the Criminal Procedure Code, calls for the record of a case from a subordinate Magistrate, the latter is ousted from his jurisdiction to deal with the case after the receipt of the order. It is not competent to him thereafter to record a compromise of the case between the parties and to pass an order of acquittal.

THIS was a Criminal Reference made by C. A. Beyts, District Magistrate, Nasik.

The complainant filed a complaint against two accused under sections 323, 426, 504 and 506, Indian Penal Code, in the Court of the Magistrate, First Class, Nasik Taluka, on July 2, 1924.

² Criminal Reference No. 86 of 1924.

1924.

VISHNU
RAM-
CHANDRA
v.
TUKARAM
GANU.

1924.

December 8.

1924.

MARUTI
VITHU.
In re.

On the application of one of the accused, the District Magistrate called for the record of the proceedings, under section 435, Criminal Procedure Code, on July 15, 1924, to see if there was any ground for transfer of the case. On August 15, 1924, the District Magistrate passed an order, under section 528, Criminal Procedure Code, transferring the case to the Court of the Sub-Divisional Magistrate, Nasik Prant.

In the meantime, however, the trial Magistrate, after sending up the record but before the District Magistrate passed the order of transfer, accepted a compromise arrived at between the parties and acquitted the accused.

The District Magistrate, being of opinion that the order of acquittal was passed without jurisdiction and therefore illegal, referred the case to the High Court.

PRATT, J.:—The complainant filed a complaint on July 2, 1924, against two accused of various compoundable offences. On July 15, 1924, the District Magistrate in revision called for the papers, under section 435 of the Criminal Procedure Code, with a view to withdraw the case from the First Class Magistrate and refer it for trial to another Magistrate. As a matter of fact he did so order on August 15. But in the meanwhile on July 31 the Magistrate recorded a composition of the offence and acquitted the accused under section 345, Criminal Procedure Code.

The District Magistrate refers the case to us on the ground that the jurisdiction of the First Class Magistrate, Mr. Deshpande, ceased after the order had been made calling for the papers. We think the contention of the District Magistrate is correct. When the order was made calling for the record and proceedings with a view to withdrawing the case and transferring it to

another Magistrate the case was no longer on the file of the Magistrate and his jurisdiction was suspended. We, therefore, think that the order of acquittal made on July 31 is void and of no effect.

We, therefore, return the record and proceedings with a direction that the case should now proceed before the Court of the Sub-Divisional Magistrate at Nasik to whom it was transferred by the District Magistrate. This is, of course, without prejudice to the rights of the parties to effect a fresh composition before that Magistrate.

Order accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Crump.

BHIKHALAL GIRDHARDAS PATEL (ORIGINAL PLAINTIFF), PETITIONER *v.*
ACHARATLAL LALLUBHAI AND OTHERS (ORIGINAL DEFENDANTS),
OPPONENTS^a.

1924.
December 10.

Civil Procedure Code (Act V of 1908), section 115—Award—Decree in terms of award by Subordinate Court—High Court's power to entertain application in revision—Discretion.

Under section 115, Civil Procedure Code, 1908, it would be competent for the High Court to entertain an application against the decree passed by a Subordinate Judge in terms of an award, if it appears that the Subordinate Judge has brought himself within the provisions of section 115.

Merali Visram v. Sheriff Dewji⁽¹⁾, approved.

There is no obligation on the High Court to interfere on an application made under section 115, Civil Procedure Code, 1908, even if facts are proved which would bring the application within the section. It is purely a matter of discretion and no rule can be laid down as to how that discretion is to be exercised. Whether the Court will interfere or not is entirely for the Court which hears the application to decide on the particular circumstances of the case before it.

^a Application under Extraordinary Jurisdiction No. 51 of 1923.

(1) (1911) 36 Bom. 105.