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APPELLATE CIVIL.

32 C. 1060=9 C. W. N. 847 =2 C. L. J. 396.

tumely is not a ground of action, and substantially the same principle has been recognised in our Courts.

The question now before us has been considered by the Courts of this country in more than one case. In *Subbaiyar* v. *Kristnaiyar* (1) it was held by the High Court of Madras that a brother cannot sue for a slander of his sister. The same view was followed in *Brahmanna* v. *Rama Krishnama* (2), where the learned Judges held that a suit was not maintainable by the plaintiff for damages for defamation, where the words complained of were spoken by the defendant to the effect that the plaintiff's wife had committed adultery; it was pointed out that a contrary view would lead to the position that a slanderer might be liable to as many actions as there are relations of the person defamed. A similar view has been adopted by the High Court of Allahabad: see *Oo-das* v. *Bhowanee Pershad* (3) and *Daya* v. *Param Sukh* (4) **[1068]** in which latter case Edge, C. J. observed that an action for damages is a purely personal action, which can be maintained only by or on behalf of the person defamed. The High Court of Bombay has adopted the same rule: see *Luckumsey Rowji* v. *Hurbun Nursey* (5), where it was held that a suit brought by the heir and nearest relation of a deceased person for defamatory words spoken of the dead man, but alleged to have caused damage to the plaintiff as a member of the same family, was not maintainable. The cases of *Basumati Adhikarini* v. *Budram Kolita* (6) and *Thakur Das* v. *Adhar Chandra* (7) are not opposed to this view and are clearly distinguishable, as they were both cases under the Indian Penal Code. In the first case the question that we have to determine was not raised. The second case turned upon the construction of section 198 of the Criminal Procedure Code, and it was held that where imputations are made against the character of a Hindu lady, a widow residing in the house and under the charge of her brother, the brother under the circumstances and the conditions of life of the people in this part of India is a person aggrieved within the meaning of section 198 of the Criminal Procedure Code, and that it is consequently competent to a Court to take cognizance of the offence of defamation upon his complaint. In my opinion the rule that a suit for damages for defamation can only be brought by the person actually defamed is applicable to this case, and the contrary view urged by the appellant is supported by neither principle nor authority. The appeal consequently fails and must be dismissed.

Appeal dismissed.

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32 C. 1069 (=3 Cr. L. J. 119.)

[1069] CRIMINAL REVISION.

Before Mr. Justice Pargiter and Mr. Justice Woodroffe.

TARA CHAND SINGH *v.* EMPEROR.*

[19th June, 1905.]

Remand—Appeal—Sessions Judge, Power of—Jurisdiction—Practice.

* Criminal Revision No. 387 of 1905, against the order of A. C. Sen, Sessions Judge of Bankura, dated April 1, 1905.

(1) (1878) I. L. R. 1 Mad. 383.
(2) (1894) I. L. R. 18 Mad. 250.
(3) (1866) 1 Agra H. C. 264.
(4) (1888) I. L. R. 11 All. 104.
(5) (1881) I. L. R. 5 Bom. 580.
(6) (1894) I. L. R. 22 Cal. 46.
(7) (1904) I. L. R. 32 Cal. 425.

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A Sessions Judge, while disposing of a criminal appeal, has no authority under the Code of Criminal Procedure to remand the case when the judgment of the Court below is unsatisfactory, directing it to write out a proper judgment after rehearing the parties, if they so desire.

It is the duty of the Sessions Judge in such a case to go fully into the whole facts and dispose of the appeal He cannot devolve this duty on the Court below.

RULE granted to Tara Chand Singh and others, petitioners.

The material facts of this case are briefly as follows:—A complaint was made against the petitioners alleging that in consequence of some dispute about the realisation of certain instalments of paddy, the petitioners with a number of men attacked and beat the complainant and his people, who were keeping watch over the paddy harvested by them, and looted portion of the same.

The petitioners pleaded not guilty, and alleged that the case was falsely brought as Tara Chand had demanded enhanced rent, for some land held by the complainant in excess of the land for which he paid rent.

The Deputy Magistrate, who tried the petitioners, convicted them under ss. 147 and 379 of the Penal Code, and sentenced them to six month's rigorous imprisonment each.

The petitioners preferred an appeal to the Sessions Judge of Bankura; and the learned Judge set aside the conviction and **[1070]** sentence and remanded the case to the Magistrate, who tried the accused, with the following observations:—

"**. . . . . I find the judgment written out by the Magistrate is quite insufficient under the law. He has simply discussed the motive of the accused and then given his opinion that the case for the prosecution is true and the counter case brought by the accused is false. . . . . He has convicted the accused of the offences under ss. 147 and 379, Indian Penal Code, but had not come to any findings as regards the common object of the unlawful assembly and the possession of the property. I therefore set aside the convictions and sentences and send back the record to the Magistrate with instructions to write out a proper judgment. What things a 'criminal judgment should contain' he will find on a reference to s. 366 of the Criminal Procedure Code. Before writing the judgment he will hear both sides, if they so desire.'**

The petitioners then moved the High Court to set aside the order of remand mainly on the ground that it was made without jurisdiction, and obtained this rule.

Babu *Digambar Chatterjee* for the petitioners.

No one appeared to show cause.

PARGITER AND WOODROFFE JJ. The three applicants were convicted by the Deputy Magistrate of Bankura under sections 147 and 379 of the Indian Penal Code, and were sentenced to six months' rigorous imprisonment each. They appealed to the Sessions Judge, and he remarked that the Deputy Magistrate "does not seem to have at all considered the evidence and weighed it with reference to the occurrence," and that the Deputy Magistrate "had not come to any findings as regards the common object of the unlawful assembly and the possession of the property." He therefore set aside the conviction and sentence and sent the case back to the Magistrate to rehear the parties, if they desired, and write out a proper judgment.

A rule was issued on the District Magistrate to show cause, why the order of the Sessions Judge should not be set aside on the ground that it was not passed under any section of the Criminal Procedure Code, and why the Sessions Judge should not hear and decide the appeal himself.

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The District Magistrate has submitted an explanation from the Deputy Magistrate and does not show cause against the rule.

[1071] We must point out to the Sessions Judge that he had no authority under any section of the Criminal Procedure Code to pass the order, which he did. If the Magistrate's decision was not as satisfactory as he thought it should have been, it was his duty as Sessions Judge in appeal to go into the whole facts fully and dispose of the case. He could not devolve this duty, as he did, on the Deputy Magistrate.

We therefore make the rule absolute, and direct that the appeal to the Sessions Judge be readmitted and that he do hear it according to law.

Rule absolute.

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32 C. 1072 (=10 C. W. N. 505=2 C. L. J. 390.)

[1072] APPELLATE CIVIL.

Before Mr. Justice Pratt and Mr. Justice Bodilly.

LOKE NATH MISRA *v.* DASARATHI TEWARI.*

[3rd August, 1905.]

Civil Court—Civil Procedure Code (Act XIV of 1882) s. 11—Suit for right to property or to an office—Suit relating to religious rites and ceremonies—Suit by a worshipper to have idol located in a particular temple—Jurisdiction.

Suits as to religious rites and ceremonies, which involve no question of the right to property or to an office are not suits of a civil nature within the meaning of s. 11 of the Civil Procedure Code and are not within the jurisdiction of the Civil Court.

Vasudev v. *Vamnaji* (1) approved.

A suit by the worshipper of an idol, not based on any right to the property in the idol or to an office, against its custodians to locate it in a particular temple instead of in another, there being no allegation that the plaintiff is prevented from worshipping the idol at the latter temple, is not cognizable by a Civil Court.

Jagannath Churn v. *Akali Dassia* (2) distinguished.

O. Nagiah Bathudu v. *Muthacharry* (3) referred to.

[Ref. 30 Mad. 158=17 M. L. J. 1=2 M. L. T. 69.]

SECOND APPEAL by the plaintiff Loke Nath Misra.

The plaintiff alleged that from ancient time certain idols were established in a temple at the eastern end of a certain road; that on certain festivals the idols used to be carried in procession from this temple to another at the western end of the road; that after a stay of a few days the idols were carried back to the eastern temple, where they used to remain; that during these processions the plaintiff and other persons, by whose doors the procession passed had the right to make offerings of food to the idols; that on the occasion of one of these festivals in the year 1307 [1073] the idols were carried to the western temple but instead of bringing them back to the eastern temple, the defendants acting in concert carried the idols in procession for only a short distance towards the east and then carried them back and kept them in the western temple in violation of the old practice; that in consequence he was prevented from

* Appeal from Appellate Decree No. 1939 of 1903 against the decree of M. Abdul Barry, Subordinate Judge of Cuttack, dated the 29th June 1903, reversing the decree of Narendra Nath Ghose, Additional Munsif of Puri, dated the 20th of September 1901.

(1) (1880) I. L. R. 5 Bom. 80.
(2) (1893) I. L. R. 21 Cal. 463.
(3) (1900) 11 M. L. J. 215.