1902

KESHWAR LAL SHAHA v. GIRISH CHUNDER DUTT.

Penal Code, which is, by s. 40 as amended, extended to offences under special laws, such as the Excise Act. But, as has been held in another case, s. 114 would not apply unless the person present abetting the offence would, if absent, have been guilty of abetment. We think, however, that the findings of the Sessions Judge bring the offence committed by the servant within s. 34 of the Indian Penal Code. Such a case was not considered by the learned Judges who decided *Queen-Empress* v. *Harridas San* (1), and in this view we think that the conviction and sentence were correct. We discharge this Rule.

D. S.

Rule discharged.

Before Mr. Justice Rampini and Mr. Justice Pratt.

1902
March 11.

SHAMSHER MUNDUL
v.
GANENDRA NARAIN MITTER.*

Jurisdiction—Presidency Group—Bench taking up cases of the Presidency Group, whether it has jurisdiction to set aside decrees of the Presidency Small Cause Court—Presidency Small Cause Court Act (XV of 1882 as amended by Act I of 1895)—Rules of the Appellate Side of the High Court, Rule II, Chapter III, column 1.

The Bench taking cases of the Presidency Group has no jurisdiction over the Court of Small Causes at Calcutta, and it has no power to set aside the decrees of the said Court.

SHAMSHER MUNDUL moved the High Court and obtained this Rule.

On the 14th June 1901, the petitioner, Shamsher Mundul, obtained a decree in the Court of Small Causes at Calcutta against Puddomoni Dasi, and in execution of that decree several tiled huts of the judgment-debtor were attached. One Ganendra Narayan Dutt preferred a claim, alleging that he had purchased the said huts from the judgment-debtor. The Judge of the Small Cause Court, on taking evidence, allowed the claim, and ordered that the claimant might at any time remove the huts.

Babu Boidya Nath Dutt for the petitioner.

* Civil Rule No. 2766 of 1901.

(1) (1890) I. L. R. 17 Calc. 566.

1902

SHAMSHER MUNDUL v. GANENDRA NARAIN MITTER.

Dr. Rash Behary Ghose and *Babu Saroda Prosonno Roy* for the opposite party.

RAMPINI AND PRATT JJ. This is a Rule calling upon the opposite party to show cause why the judgment complained of in this case should not be set aside on the ground that it dealt with a claim to tiled huts, which, in accordance with the ruling in the case of *Denonath Batabyal* v. *Adhor Chunder Sett* (1), a Small Cause Court has no jurisdiction to deal with, being immoveable property.

Dr. Rash Behari Ghose, for the opposite party, contends that the Bench taking cases of the Presidency Group has no jurisdiction to deal with this matter, and that it has no power to set aside the decree of the Calcutta Court of Small Causes, which is not within the jurisdiction of this Bench. He calls attention to Rule II of Chapter III of the Rules of this Court, Appellate Side, in column 1 of which rule the districts over which this Bench has jurisdiction are specified, and he points out that the 24-Parganas is one of those districts, but Calcutta is not. He has further called attention to the cases of *Peary Mohun Ghosaul* v. *Harran Chunder Gangooly* (2) and *E. D. Sassoon* v. *Hurry Das Bhukut* (3), which show that rules for the setting aside of decrees by the Small Cause Court are issued from the Original Side of this Court.

On the other hand, the learned pleader for the applicant relies upon the case of *Kadambini Baiji* v. *Madan Mohun Basak* (4), in which it has been held that the High Court, in the exercise of its appellate jurisdiction, has power to transfer a suit from the Court of Small Causes to any other Court having equal or superior jurisdiction.

We are of opinion that the contention of the opposite party in this Rule must be given effect to and the Rule discharged. It is clear to us from the Rule of this Court above referred to that this Bench, as a Bench having jurisdiction over the Presidency Group, has no jurisdiction over the Court of Small Causes, which is situate in the town of Calcutta, and from the two cases above cited it is evident that it is the practice for Rules of this nature

(1) (1899) 4 C. W. N. 470.
(2) (1885) I. L. R. 11 Calc. 261.
(3) (1896) I. L. R. 24 Calc. 455.
(4) (1898) 3 C. W. N. 247.

1902

SHAMSHER MUNDUL v. GANENDRA NARAIN MITTER.

to be issued not by the Presidency Bench, but by one of the Judges sitting on the Original Side. The case of *Kadambini Baiji* v. *Madan Mohan Basak* (1), on which the pleader for the applicant relies, seems to us not to furnish any argument in his favour, inasmuch as the Bench, which decided that case, was not dealing with a Rule issued under the revisional jurisdiction of this Court provided for by s. 622, Civil Procedure Code, but with a Rule issued on an application under s. 25 of the Code for the transfer of a case from Calcutta to a Court in the Dacca district. It was, moreover, not a Bench dealing with the Presidency Group, but was the Vacation Bench, for the decision, on which the pleader for the applicant relies, was passed on the 13th September 1898, which was during the vacation. Further, we observe that it was in the exercise of its jurisdiction under s. 15 of the Charter, read with s. 6 of Act XV of 1882, that the order was passed. We have in this case not been asked to exercise our extraordinary jurisdiction under s. 15 of the Charter.

For these reasons we hold that we have no jurisdiction to deal with this matter, and we discharge this Rule with costs.

S. C. G. *Rule discharged.*

Before Mr. Justice Pratt and Mr. Justice Geidt.

1902
April 30.

SOSHI BHUSAN GHOSE
v.
GONESH CHUNDER GHOSE.*

Injunction—Specific Relief Act (I of 1877) s. 54—Judicial discretion of Court—Where the act of the defendant amounts to an ouster of the plaintiff from the possession of the joint-property.

In a case where the act of the defendant amounts to an ouster of the plaintiff from his possession of joint-property, pecuniary compensation not being an adequate relief, an injunction would be the proper remedy.

Anant Ramrav v. *Gopal Balvant* (2) followed.

THE defendants, Soshi Bhusan Ghose and another, appealed to the High Court.

* Appeal from Appellate Decree No. 1664 of 1900, against the decree of Babu Hemanga Chunder Bose, Subordinate Judge of Hooghly, dated the 13th of August 1900, reversing the decree of Babu Khetter Nath Dutt, Munsiff of Howrah, dated the 18th of April 1900.

(1) (1898) 3 C. W. N. 247. (2) (1894) I. L. R. 19 Bom. 269.