

CRIMINAL REVISION.

Before Mr. Justice Holmwood and Mr. Justice Sharfuddin.

1910
Dec. 5.

NALOO PATRA

v.

EMPEROR.*

False evidence—False statements in an application for mutation proceedings—Obligation to make a true declaration therein—Verification of application—Validity of Rules of the Board of Revenue, Chap. V, rule (5)—Penal Code (Act XLV of 1860), ss. 191, 193—Land Registration Act (Beng. Act VII of 1876), ss. 42, 53, 88.

An applicant for mutation of names under section 42 of the Bengal Land Registration Act is bound by Rule 5, Chapter V, of the Rules of the Board of Revenue, framed under section 88 of the Act, to make a true declaration on the subject of his application, and is punishable under sections 191 and 193 of the Penal Code for making false statements therein.

Debi Saran Misser v. Emperor (1) referred to.

Queen-Empress v. Appayya (2); *Durga Das Rukhit v. Queen-Empress* (3); *Ezra v. Secretary of State* (4); and *British India Steam Navigation Co. v. Secretary of State for India* (5) distinguished.

Rules passed by the Board of Revenue under section 88 of the Act, provided they refer to the procedure as to presentation, admission and verification of an application for registration under Part IV of the Act, and as to inquiries under section 52 thereof, have the force of law.

ONE Parbati Dai died intestate, leaving her surviving Hari Charan Shahu, the son of Hridananda, who was a brother of her husband, and three daughters, one of whom was Tula Dai, the wife of the petitioner Naloo Patra, and the mother of Nidhi Patra. Tula having been dispossessed by Hari Charan, in 1903, instituted a suit against him, in the Court of the Munsiff of Jaipur, for declaration of her title and the recovery of possession of two plots of certain lakhiraj lands which she claimed to have fallen to her share by agreement with her

* Criminal Revision, No. 1343 of 1910, against the order of G. S. Macpherson, Sessions Judge of Cuttack, dated Sept. 22, 1910.

(1) (1907) 11 C. W. N. 470.

(3) (1900) I. L. R. 27 Calc. 820.

(2) (1891) I. L. R. 14 Mad. 484.

(4) (1902) I. L. R. 30 Calc. 36.

(5) (1910) I. L. R. 38 Calc. 230.

sisters. She died during the pendency of the suit, and her son, Nidhi Patra, was substituted as a party. The Munsif passed a decree, on the 30th May 1909, declaring Nidhi entitled to one plot, and asserting his right to recover possession of the same from Hari Charan. On appeal, the District Judge of Cuttack reversed the Munsif's order, on the 25th June, holding that Nidhi took no share in his mother's property, and that it ceased to be *stridhan* on her death. The petitioner was aware of the Judge's decision and its terms. On the 18th March 1910 he presented to the Land Registration Deputy Collector an application under section 42 of the Bengal Land Registration Act, on behalf of his son Nidhi, for mutation in place of Hari Charan, alleging the former's possession since 1902 and title by right of inheritance, and stating that, after the death of Parbati, Tula was in possession and Nidhi after her decease, that, Hari Charan having attempted to disposses Tula, she brought a suit against him, which was decreed by the Munsif a copy of whose judgment was filed, and that he got his name registered as proprietor by fraud and concealment of such decree. He prayed that, in consideration of the decree filed, necessary orders for mutation might be passed. The application was in the form (Misc. No. 225-A) prescribed by the Rules of the Board of Revenue framed under section 88 of the Bengal Land Registration Act, and contained the following verification in the form laid down in Chapter V, Rule (5), of the Board's Rules:—“*The facts set forth above are true to my knowledge.*” The Deputy Collector examined the petitioner, who stated that he based his claim for mutation on the Munsif's decree, and granted sanction on the 11th September 1910, to prosecute him under section 193 of the Penal Code for having made a false declaration in his petition of the 18th March. The accused was then tried and convicted thereunder, on the 18th August, and sentenced to six months' rigorous imprisonment by Babu S. C. Bose, Deputy Magistrate of Cuttack. An appeal against the conviction was dismissed by the Sessions Judge of Cuttack on the 22nd September. He thereupon obtained a Rule from the

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High Court to set aside the order of the Magistrate in the terms set out in the Judgment below.

Mr. A. K. Ghose and Babu Chandra Sekhar Banerjee,
 for the petitioner.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

HOLMWOOD AND SHARFUDDIN JJ. This was a Rule calling upon the District Magistrate of Cuttack to show cause why the conviction of, and sentence passed on, the petitioner should not be set aside, on the ground that a statement made in an application under the Land Registration Act is not necessarily a declaration within the meaning of section 191 the Indian Penal Code.

We have heard counsel in support of the Rule and the learned Deputy Legal Remembrancer showing cause, and we have considered sections 53 and 88 of Act VII of 1876, and the rulings on what are said to be analogous points, for which we have been referred to the case of *Queen-Empress v. Appaya* (1), and to a case under the Land Acquisition Act, namely, the case of *Durga Das Rukhit v. Queen-Empress* (2), which has been followed in the case of *Ezra v. Secretary of State* (3) and in the recent case of land acquisition known as the *Bracebridge Hall Case* (4). But all these cases turn on the fact that the statements were not made to a Court nor to any one authorised to take down such statements on oath. Now under the Land Registration Act, with which we are now dealing, the case is quite different. The Collector under that Act is a duly constituted Court, and is empowered by section 53 to summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure. Moreover, under section 88, it is laid down that there are to be, under this Act, rules made for the presentation, admission and verification of applications for registration, and to

(1) (1891) I. L. R. 14 Mad. 484. (3) (1902) I. L. R. 30 Calc. 36.

(2) (1900) I. L. R. 27 Calc. 820. (4) See *ante*, p. 230.

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Board is directed, within four months of the date on which this Act comes into force, to make general Rules, consistent with this Act, to regulate the form in which registers under this Act are to be kept, and to cancel or alter from time to time any such Rules. Now it may be said that the Rules themselves are not part of the law. But the mandate given by the law is that the Collector is to have power to make some kind of verification, on the application, and that verification may, under section 53, be on oath. It seems to us clear that this declaration comes within the meaning of section 191 of the Indian Penal Code, namely, that a claimant asking for land registration is bound by law to make a true declaration upon the subject of his application, and the offence is, as laid down in the case which we have just cited, not in making a verification on oath, but in making a false statement in the course of the verification. We are fortified in this opinion by the decision in the case of *Debi Saran Misser v. Emperor* (1), where a converse proposition is laid down that "Rules passed in the course of a proceeding of the Board of Revenue, and not drawn up by the Board under section 88 of the Land Registration Act, have not the force of law." It is argued that the converse proposition is not necessarily true; but the opinion, which is no doubt an *obiter*, to be derived from the remarks of the learned Judges in that case is certainly the view which we are inclined to take in this case, that Rules passed by the Board of Revenue under section 88, provided they refer to the procedure as to presentation, admission and verification of an application for registration under Part IV, and as to enquiries under section 52, have the force of law by reason of the express enactment of section 88 itself. We, therefore, think that the only point on which this Rule was issued fails, and the Rule is discharged.

The petitioner must surrender to his bail and serve out the rest of his sentence.

Rule discharged.

E. H. M.

(1) (1907) 11 C. W. N. 470.