

**In Re: Visa Samta**

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**SooperKanoon Citation :** [sooperkanoon.com/338553](http://sooperkanoon.com/338553)

**Court :** Mumbai

**Decided On :** Oct-01-1914

**Reported in :** AIR1914Bom225(1); (1914)16BOMLR951

**Judge :** Heaton and ;Shah, JJ.

**Appeal No. :** Criminal Application for Revision No. 245 of 1914

**Appellant :** In Re: Visa Samta

**Judgement :**

**Heaton, J.**

1. In this case the Talati of a certain village on behalf of the Talukdar brought a complaint of theft against one of the tenants of the Talukdar in respect of some fallen trees which the tenant had cut down and taken. The trying In re Magistrate disposed of the matter in favour of the accused so far as the matter of the offence went. But he ordered the property (the wood) to be restored to the complainant. The matter came before the District Magistrate with reference to this order about the property. The District Magistrate at first said :-'In these circumstances I think it would have a salutary effect if I directed that the wood be sold and the proceeds credited in the Treasury as a criminal deposit to be paid to such one of the parties who shall bring either a decree of a competent Court or a consent of all the other parties.' However, he did not give effect to this intention. He had the matter argued before him, and then he decided, as appears from this part of his judgment. ' On

the whole since I expect that in the event of a case being instituted in a Civil Court the Talukdars would be adjudged to be the proprietors of the trees no great harm will be done by allowing Magistrate's order to stand. I cannot, however, express too strongly my hope that the Sanand Magistrates will, in future, when criminal complaints are made of theft in cases where there is a bona fide dispute about property, and especially in the case of these trees at Garodia, dismiss the complaint under Section 203.' We think the District Magistrate is right in emphasizing the necessity for not treating cases of this kind as if they were criminal cases. By allowing the complainant to take the wood however he has secured to him one of the chief advantages to be gained by this very bringing of the complaint which he so strongly deprecates. On the other hand, to allow the wood to be taken by the accused would be to disregard the only decision that there is on the question of ownership of the trees, that is, the decision arrived at by the Survey Settlement Officer that the Talukdar is the owner.

2. We think that the order originally proposed by the District Magistrate is quite the best in this case. We cancel the order he has made and in its place make that order which the District Magistrate originally thought was the best, i.e. that the wood should be sold if it has not been already sold and the proceeds should be retained by the Court until they are shown to be payable to one or other of the parties either in virtue of a decree of Court or in virtue of an agreement amongst themselves.