

Mangat Rai Vs. Emperor

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Court : Allahabad

Decided On : Oct-13-1909

Reported in : 5Ind.Cas.695

Judge : Tudball, J.

Appellant : Mangat Rai

Respondent : Emperor

Judgement :

Tudball, J.

1. The facts of this case are briefly as follows: The applicant was the mortgagee of half a house. He brought a suit for sale of that share against one Jhugra and his son Jethu. A decree was passed, in his favour, for a certain sum recoverable by sale of the half share. He made two or three applications for execution of his decree. The first application asked for the recovery of the money by sale of the half share. The application fell through. He then made a second application for the sale of the whole house. That application also fell through. His third application, the one with which we are now concerned, was for recovery of the money by the sale of the whole house. Notice was issued; no objection was taken and the whole house was sold and purchased by the applicant. Then Jethu came into Court and objected in respect to the sale of more than a half share. His objections prevailed. The Munsif, thereupon, placed the applicant upon his trial for an offence under

Section 193, Indian Penal Code, on the ground that he had put a false verification to his application for execution. At his trial the applicant pleaded that it was a bona fide error. The Magistrate convicted him under Section 193 of the Code. He appealed to the Sessions Judge, who altered the conviction to one under Section 210 of the Code and maintained the sentence. The applicant now urges, firstly, that the Judge was not justified in altering the finding, to one under Section 210, secondly the act does not constitute an offence within the meaning of Section 210, and thirdly, the facts found do not establish fraud. Assuming for a moment that the action of the Sessions Judge, in altering the conviction to one under Section 210, is quite correct and that the offence, if one at all had been committed, would be one falling under that section, it seems to me that accepting the findings of fact to be correct, they fall far short of establishing any dishonest intention on the part of the applicant. It is true he is a mahajan about 30 years of age, that he is a business-man, that he obtained a decree for the sale of only half the house and that his first application for execution asked for the sale of only that shire; in spite of all these facts it is not clear beyond all reasonable doubt that he did not make a mistake in his second and third applications and that that mistake was not a bona fide one. Business-men like the applicant usually leave such matters to their pleaders. Such applications for execution are usually drawn up by the pleaders' moharrirs and errors of this description frequently creep into such applications. In the absence of other evidence, which would point conclusively to a fraudulent intention on the part of the applicant, I am unable to hold that the facts proved leave it beyond doubt that the applicant was acting dishonestly in the matter. It is perfectly possible that it was a genuine mistake. In this view I accept the application. It is unnecessary to go into other points. The conviction and sentence are set aside. As the applicant is on bail, the bail bond is ordered to be discharged.