

Ram Harakh Pathak Vs. Emperor

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Court : Allahabad

Decided On : Jul-06-1925

Reported in : 90Ind.Cas.913

Judge : Banerji, J.

Appellant : Ram Harakh Pathak

Respondent : Emperor

Judgement :

Banerji, J.

1. The appellant has been convicted by the Additional Sessions Judge of Basti under Section 477, Indian Penal Code, and sentenced to 2 1/2 years' rigorous imprisonment.
2. The charge against him is that he destroyed a patta which he and Sheo Agyan had executed in favour of Sheobalak, son of Jagai, on the 11th of February 1925.
3. It appears that there was a suit filed in the Court of the Munsif of Basti by the accused and some others against Jagai for a declaration that certain land was their khudkasht. Jagai defended the suit on the ground that the land was his occupancy tenancy. Jagai was referred by the Munsif under the provisions of Section 202 of the Tenancy Act to the Revenue Court to get hid status qua this

land declared. In the meantime a riot took place in the village, and he the appellant, and several others were prosecuted for offences of rioting and hurt. While that case was pending, a patta (together with a kabuliyat) was executed on the 1st of October 1924 in favour of Sheobalak, son of Jagai, relating to the land which was in dispute in the Court of the Munsif. This patta along with many others was executed the same day, and this patta was kept with Thakur Ansuman Singh, Vakil, at whose house they were executed, on condition that the entire litigation, both civil and criminal, was to be compromised after which the patta would be registered, and Thakur Ansuman Singh was to hand over the patta to the adversary of the party that did not carry out the terms of the compromise. The land comprised in the patta belonged to a family of six, of which Ram Harakh and Sheo Agyan were members, and the patta although written on behalf of all the members of the family, was only signed by Ram Harakh and Sheobalak.

4. After this Jagai confessed judgment in the civil case and a decree was recorded by the Munsif against him. It appears that an attempt was made to compromise the riot case, but the Trying Magistrate did not allow the case to be compromised. The result was that Ram Harakh and others were convicted and sentenced to substantial fines. Ram Harakh refused to register the patta and thereupon Jagai instituted a suit to set aside the 'confession decree' on the ground of fraud. This suit was instituted on the 18th of November 1924 against all six members of the family whose names appear in the first part of the patta, praying that the patta be registered. On the 4th of January 1925 a written statement was filed by Ram Harakh and Sheo Agyan in that suit, and the averments of fact with reference to this patta were not traversed by these two persons. Various legal pleas were taken as to the validity of the patta, but, as I have stated, there is no controversy as to what was written in the patta. It appears that on the 11th of February the clerk of Ansuman Singh gave this patta to Jagai, and Ram Harakh and Jagai had a dispute as to the possession of this document, the result of which was that a portion of it was left in possession of Jagai, and another portion in that of the accused Ram Harakh. These are the main facts upon which the charge has been framed against Ram Harakh. Jagai has in Court given details which are at variance with those given by him in the first report, but there can be no doubt, whether the account given by Jagai in the first report is correct or whether the

account now given by him is correct, that the patta was torn in a struggle between Jagai and Ram Harakh, and that it is proved beyond all doubt, and that the account given of it by Balramji, to whom Jagai made a statement immediately after the occurrence, is substantially correct, The points for consideration in this case are:

(1) whether the document was or was not a valuable security, and (2) whether Ram Harakh destroyed the document with intent to cause damage or injury to Jagai.

5. It has been argued by the learned Counsel for the appellant that this document was not a valuable security, inasmuch as the document purports to have been executed by six persons, but that two only signed the document, and that, therefore, it was not a document which could be said to be a valuable security within the meaning of Section 30 of the Indian Penal Code. I am, however, of opinion that the document comes within the definition of valuable security in Section 30. That document purports to create a legal right in Sheobalak in the land referred to therein. The use of the words 'which is' or 'purports to be' in Section 30 of the Indian Penal Code to my mind indicates that a document, which, upon certain evidence being given, may be held to be invalid but on the face of it creates, or purports to create a right in immoveable property, although a decree could not be passed upon the document, is contemplated within the purview of that section. Had it not been so, any forged document, if the forgery was admitted, or any document which was not executed or stamped according to law and on which no decree could be passed by a Civil Court, could not be called a valuable security. In this case we have not the written statement in the civil suit of the other four members of the family. If the two persons, namely, Ram Harakh and Sheo Agyan had signed the document as representing the family, there was nothing illegal in that. Reference has been made to the cases reported as *Jawahir Thakur v. Emperor* 34 Ind. Cas. 315 : 38 A. 430 : 14 A.L.J. 643 : 17 Cr. L J. 203 and *Ramasami Iyer v. Emperor* 43 Ind. Cas. 593 : 41 M. 589 : 19 Cr. L.J. 177 by the Government Pleader. I do not think that these cases have any bearing on the point before me. They are clearly distinguishable.

6. With regard to the next point, I am of opinion that the prosecution has not been able to show that the act of Ram Harakh in destroying the patta was done with the intention of causing any damage or injury to Jagai. The facts as set out in the plaint of Jagai in the civil suit are admitted by the accused. It is admitted that the patta only bore the signature of Ram Harakh and Sheo Agyan. There is no controversy on any point regarding the facts, and I do not see how it could be said that Ram Harakh in any way intended to cause damage or injury to Jagai, and in the absence of any such intention the charge under Section 477 of the Indian Penal Code fails. I am, therefore, of opinion that the act of Ram Harakh was not proved by the prosecution to have been with intent to cause damage or injury. The act of destroying the patta may have been a very foolish act, but I am of opinion that the conviction of Ram Harakh under Section 477 of the Indian Penal Code cannot be, maintained. I, therefore, set aside the conviction and sentence of Ram Harakh. He need not surrender to his bail.