

Ram Singh and ors. Vs. Emperor

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Court : Allahabad

Decided On : Feb-07-1935

Reported in : 156Ind.Cas.961

Judge : Kendall, J.

Appellant : Ram Singh and ors.

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. The applicants in the case from which the present application arises were convicted by a Magistrate of offences under Sections 326 and 323 of the Indian Penal Code and have been sentenced to short terms of imprisonment and those convictions and sentences have been upheld by the learned Sessions Judge sitting at Muttra. It has been urged by Mr. Pearey Lal Banerji in support of the application that the findings of the lower Appellate. Court are based on its decisions on questions of title which have been negated by a subsequent decision of the Revenue Court. The evidence relating to title is discussed at considerable length in the judgment of the Sessions Judge who was betrayed into a very long argument on this question, but the matter before him was a comparatively simple one. Certain plots which had been in the holding of one Murli

and of which the sub-tenant had been Aidal Singh were the subject of this dispute. The landholder Bharat Singh had obtained a decree for arrears of rent against Murli and had got an order for his ejectment from these plots. He had actually obtained possession from the amin and had got a dakhlanama executed. He had then executed a lease in favour of Radha Kishen and Kanchan, who are the complainants in the present case. Aidal Singh as sub-tenant of Murli was contesting Bharat Singh's right to eject Murli, but at the time when this dispute arose, namely the beginning of August 1934, the position was that Murli had at any rate been formally ejected.

2. The new tenants Radha Kishan and Kanchan had, according to the finding of the Magistrate, entered into possession of the plots in dispute and had sown a crop there. The applicants, who according to their own case, were entitled to these fields, because Murli had not been legally ejected so that his tenancy had never terminated, arrived on the scene and attempted to interfere with the cutting of the crop by Radha Kishan and Kanchan. A fight ensued in the course of which both parties received injuries, but when cross cases were instituted in the Magistrate's Court, he convicted the applicants and acquitted the other side because he held that the other side had been in possession of the field and had sown the crop. If the learned Sessions Judge had merely examined the evidence and confirmed these findings, there would have been no difficulty, but unfortunately he has devoted almost the whole of the 14 pages of his judgment to discussing the question of title which he was not in a position to decide and has thus given rise to the questions which have been argued in this Court in revision by Mr. Banerji. The argument is that whatever injuries were caused by the present applicants to the complainants were justified by the right of private defence. It has now been proved, it is said, by the decision of the Revenue Courts that Murli was not legally ejected, that the landlord had no right therefore to execute the patta in favour of Radha Kishan and Kanchan, that they were trespassing, and that the applicants were therefore justified in protecting their own property. If the Sessions Judge had merely come to a decision on the evidence that the crop had been sown by Radha Kishan and Kanchan this would have been a clear confirmation of the finding of the Magistrate. But in his elaborate discussion about title he has remarked that these tenants must have been in possession because they were entitled to it, and

the only evidence to which he refers is that of the patta executed in their favour by Bharat Singh.

3. It is at any rate clear that whether Bharat Singh had a right to lease the land or not, the tenants Radha Kishan and Khanchan believed themselves to have a right to cultivate these fields, and they were actually engaged in cutting the crop which they themselves had sown when they were attacked by the present applicants. It is possible that if their action had amounted to a criminal trespass, that is to say, if they had dishonestly entered the land for the purpose of committing an offence, the applicants would have had a right of private defence. But this case does not really arise, because according to the findings of both Courts the other tenants were in possession and not only that, but they were in possession under colour of a title. I am told that the Revenue Court has held that the proceedings of Bharat Singh were not in good faith and that these new tenants were acting as his puppets. But there is nothing on the record of the Criminal Court to show that they were acting in anything but good faith and on that point the finding of the Revenue Court is certainly not binding on them. This being so, there is no ground for interfering with the order passed, and the application fails and is dismissed. The applicants are on bail and must surrender to their sureties.