

Parmeshwar Singh Vs. Emperor

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Court : Kolkata

Decided On : Sep-02-1910

Reported in : 7Ind.Cas.812

Judge : Holmwood and ;Doss, JJ.

Appellant : Parmeshwar Singh

Respondent : Emperor

Judgement :

1. This was a Rule calling upon the District Magistrate of Bhagalpore to show cause why the conviction and sentence should not be set aside, or why such other order should not be made as to this Court may seem fit and proper.
2. The principal ground, on which we are asked to interfere in this case, is that the matter does not come within the purview of the Criminal Law. Upon the findings in the lower Court it appears to us that this contention must prevail. It is perfectly clear that the Deputy Magistrate in the Court below held that these bamboos belonged to the estate of Rash Behary Lal Mandar and that the accused was a peadah acting solely in his interest. He has altogether dismissed and disbelieved the case that the bamboos stood on the jote land of Bunday Lal. Accepting this finding it amounts to this : That Rash Behary Lal Mandar removed or damaged his own bamboos, which were in the possession of the Court of Wards under the Act. The charge of theft has already been disposed of by the learned Magistrate in the lower Court. The charge of Criminal trespass does not lie inasmuch as the

accused was entering upon property in the possession of his master without intending to commit an offence or to intimidate, insult or annoy the Court of Wards.

3. Then, if it is not a Criminal trespass, the question arises if it is mischief. Now, it is a, well-known rule of law that a man may commit mischief by damaging his own property provided he does so in order to cause wrongful loss to some body else or knowing it to be likely to cause wrongful loss to some body else. But it can hardly be said that a man who damages his own estate, although he has at present only a qualified interest, damages the trustees in possession, whose only object is to preserve the estate for the benefit of the owner. The difficulty appears to have arisen from the amendment of the Court of Wards Act made some years ago, by which a proprietor may voluntarily surrender his own estate to the Court of Wards. It is obvious that in such a case the proprietor may after surrendering his estate cause trouble to the Court of Wards by contumacious conduct such as is alleged in this case. And it is surprising that there appears to be no procedure by which the Court of Wards can deal with such conduct. But this is a matter with which we are not concerned in the Criminal Court. In this case we have only to decide whether the findings bring the case within the four walls of the Indian Penal Code. Having given our careful consideration to the case, we are decidedly of opinion that it does not, The Rule. therefore, must be made absolute. We set aside the conviction of, and the sentence passed upon, the petitioner. The fine, if paid, must be refunded.