

1894.

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tion 107 of the Indian Penal Code. We, therefore, acquit the prisoner of that offence and reverse the sentence of six months' rigorous imprisonment passed therefor.

Sentence varied.

CRIMINAL REFERENCE.

Before Mr. Justice Jardine and Mr. Justice Ranade.

IN RE RAGHUNATH MAKUND.

1894.

April 4.

Municipal Act (Bombay Act III of 1888), Sec. 353—Notice to a house-owner to reduce the height of his building given more than three months after its completion—"Completion"—Meaning of the word.

One Raghunath Makund was served with a notice, under section 353 of the City of Bombay Municipal Act (Bombay Act III of 1888), requiring him to reduce the height of a building which he had erected. The building was completed in June, 1893, and the notice was issued on 13th January, 1894. Raghunath was prosecuted for not complying with this notice. He contended that the notice was time-barred, as it had not been given within three months after the completion of the building. In answer to this plea it was urged, on behalf of the Municipality, that the building could not be said to have been completed, unless and until such accommodations as privies and cesspools had been executed in accordance with the requirements of the Health Department, and that, therefore, the notice was within time.

Held, that the notice was time-barred. The word "completion" in section 353 of Bombay Act III of 1888 must be taken in its ordinary sense, and the Court cannot read into the section "in accordance with sanitary regulations" or "sanitary officers' opinions."

THIS was a reference by P. H. Dastur, Fourth Presidency Magistrate, under section 432 of the Code of Criminal Procedure (Act X of 1882).

The reference was in the following terms:—

"Mr. Raghunath Makund has built a new house at Girgaum Back Road. The width of the street on which it abuts is about 9' 7" and the height of this building from the ground level to the eaves is 47' 6".

"By by-law 30 of the building by-laws made by the Bombay Municipality it is provided that 'a person who shall erect a new building which abuts on a street of less than 50 feet in width . . . shall not without the written permission of the Commissioner erect such a building to a greater height than one and a half times the width of that street.'

"This building is, therefore, clearly in contravention of the by-law, and a notice dated 13th January, 1894, was issued to Mr. Raghunáth requiring him under section 353 of the Municipal Act to reduce the height of his building. This has not been done, and it is now contended on behalf of the defendant that the notice is time-barred.

"Now section 353 above cited requires that the notice should be given within three months after the completion of the building, and as a matter of fact I find from the evidence that the house in question was completed in its physical sense in June last, and the only work then left undone was the connection of the sewer with the drains, which was also completed in September. I hold, therefore, that the notice issued on the 13th January is time-barred.

"It is, however, contended on behalf of the Municipality, that because all the requirements of the Health Department have not been complied with in the construction of this building, it can never be said to have been duly completed, and that, therefore, this notice is within time.

"The objections to this building are enumerated in a document filed in the case, and are briefly as follows:" (the reference then stated the defects in the pipes and cesspools connected with the privies).

"Now, it seems to me absurd to hold that because these defects exist in the building, therefore it is incomplete. I understand the word to mean physical completion; and not a completion as is desired by the officers of the Health Department. For, if such a construction were put on the word, there would practically be no limitation to the action of the Municipality under this section, and any house, no matter how long it has stood in this city, could be brought within the purview of the section, by the Health Department finding some flaws in its construction.

"Indeed, the matter seems to be so clear that I was reluctant to trouble the High Court about it, but Mr. Burder cites a case decided by the learned Chief Magistrate in which it was said an opposite view was expressed, and as the point raised is of some importance to the public, I have found it desirable to make this reference."

The reference was heard by a Division Bench (Jardine and Ránade, JJ.).

Scott (with him *Bháishankar* and *Kánga*) for Raghunáth Makund.

Jardine (with him *Crawford* and *Burder*) for the Municipality.

JARDINE, J.:—The question referred by the Magistrate under section 432 of the Code of Criminal Procedure relates to the meaning to be given to the words "completion thereof," in section 353 of Bombay Act III of 1888, used in regard to notice about "the erection of a building." The Municipality contends that a building is not completed, unless and until such accommoda-

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tions as privies and cesspools have been executed in accordance with sanitary regulations. In the present case, the building has been provided with these accommodations. It is so far complete. We are of opinion that the word "completion" must be taken in its ordinary meaning, and that the Court must not read into the section "in accordance with sanitary regulations" or "sanitary officers' opinions."

APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

1890.

May 12.

KUVERJI (ORIGINAL PLAINTIFF), APPELLANT *v.* BA'BA'I (ORIGINAL DEFENDANT), RESPONDENT.*

Estoppel—Indian Evidence Act (I of 1872), Sec. 115—Estoppel by conduct—Mistake of law—Adoption—Acknowledgment of adoption.

One Ganpatráv Ráje Shirke was possessed of considerable property both in British territory and in the territory of His Highness the Gáikwár. He died in 1858, leaving three childless widows, Laxmibái, Savitribái and Bábái. Shortly after his death, the plaintiff Kuverji, who was then a minor, was taken to Baroda by Laxmibái, and on her representations as well as those of her co-widows he was acknowledged by the Gáikwár as their adopted son, and as such entitled to succeed to all the estate and privileges enjoyed by the deceased Ganpatráv. For several years afterwards the widows treated the plaintiff as the legitimate heir and successor of Ganpatráv in respect of the Baroda property. With regard to the estate in British territory, the widows at first put forward Kuverji as the adopted son of Ganpatráv. On their application a certificate of heirship was issued under Regulation VIII of 1827, declaring that "the Báis were the widow heirs, and the minor Kuverji the son heir, of the deceased Ganpatráv." In one case the widows obtained a decree as guardians of the minor, on a bond executed in favour of Kuverji as heir to Ganpatráv. When the Bombay Summary Settlement Act (II of 1863) was passed, the widows accepted the summary settlement in respect of the inám holdings of their deceased husband, and thereupon the holdings were entered in their names in the Government records. Finding themselves secure in the possession of their husband's estate, the ladies now dropped the allegation of adoption, and dealt with the property in British territory in their own right, and not as trustees or guardians of the minor Kuverji. In 1871, Kuverji sought to have part of the property in British territory transferred to his own name as the adopted son of Ganpatráv. The widows resisted this attempt and denied his adoption. In 1881, Kuverji made a similar attempt, but failed, the Revenue authorities having eventually resolved to leave the question of Kuverji's title by adoption to be determined by the Civil Court.

* Appeal, No. 80 of 1886.