

is perhaps unnecessary to say that the sale-proceeds will devolve in the same way as the land would have done, but, if desired, a provision to this effect can be inserted in the order as was done in the order on the files of this Court made by Sir Lawrence Jenkins in *In re Manilal Hurgovan*<sup>(1)</sup>, where he dealt with the extraordinary jurisdiction of the Court to sanction the sale of a minor's interest in Hindu joint family property. Accordingly the order will be as prayed, but the petitioners will have their costs of the petition out of the trust estate between solicitor and client, and, having regard to my order and the letter of consent of 2nd August, 1918, there will be no necessity for the children of Shirinbai to join in the conveyance. The title of the petition and order will be amended by adding "and Extraordinary Civil Jurisdiction" after "Ordinary Original Civil Jurisdiction," and there will be liberty to apply as to re-investing in land and generally.

Solicitors for petitioners: Messrs. *Ardeshir, Hormusji, Dinshaw & Co.*

*Order accordingly.*

G. G. N.

(1) (1900) 25 Bom. 353.

## CRIMINAL REVISION.

*Before Mr. Justice Heaton and Mr. Justice Hayward.*

EMPEROR v. HAJI GULAM MAHOMED AZAM<sup>o</sup>.

*Indian Penal Code (Act XLV of 1860), sections 341 and 109—Wrongful restraint—Tenant holding over—Landlord preventing the tenant from going to the demised premises.*

The accused having prevented a tenant of his who was holding over from entering the demised premises, was convicted of wrongful restraint

<sup>o</sup> Criminal Application for Revision No. 248 of 1918.

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(sections 341 and 109 of the Indian Penal Code). On application to the High Court under criminal revisional jurisdiction:—

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*Held*, that the accused was rightly convicted inasmuch as the tenant holding over had, in India, a position recognised by the law and had a right to retain possession of the premises he occupied even against the landlord himself until dispossessed in due course of law.

THIS was an application under criminal revisional jurisdiction against conviction and sentence passed by A. H. S. Aston, Chief Presidency Magistrate of Bombay.

The accused owned a house, one room of which was occupied by the complainant as a tenant of his. He gave the complainant a notice to quit and agreed to let the whole floor of the house to a photographer. The complainant did not quit the premises but held over. In order to convert the floor of the house into a studio for the new tenant, the accused had a portion of the roof opened up and some of the tiles removed. The tiles were stored up in a passage through which the complainant usually entered his room. The rest of the roof over the passage and other portions were next removed and the debris was piled up in the passage. The complainant was thus unable to reach his room by his usual passage.

On these facts the accused was prosecuted for offences of mischief and wrongful restraint (sections 426, 341 and 109 of the Indian Penal Code). He was acquitted by the trying Magistrate on the first charge, but he was convicted on the second and sentenced to pay a fine of Rs. 15.

Hence this application.

*Strangman* with *Velinkar*, instructed by *Payne & Co.*, for the accused.

*Setalvad* with *M. B. Dave* (for *G. N. Thakor*), for the complainant.

*S. S. Patkar*, Government Pleader, with *E. F. Nicholson*, Public Prosecutor, for the Crown.

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HEATON, J.:—The accused, a landlord, has been found guilty of abetting the offence of wrongful restraint in that he caused the door of the complainant's room which opened outwards, to be blocked up. By so doing he prevented the complainant from entering his room by the ordinary door, that is, he prevented him from going in a direction in which it is said he had a right to go. If the facts and if the rights of the complainant are as stated and implied in this brief statement, then the conviction is correct.

The case is not one of the kind that usually invites our consideration in revision. The Magistrate was quite competent to ascertain the facts and to make the required inferences from them. I do not propose, therefore, to say more on that aspect of the case.

But owing to the circumstances that the accused is a Bombay landlord and the complainant had been one of his tenants and still remained in occupation of one of the rooms in the landlord's premises, the discussion has touched points of some general importance. As these points are relevant to the case something ought to be said about them.

By the 1st March at latest the complainant had ceased to be a real tenant of the accused and though he remained in occupation of the room he had formerly rented, the complainant did so against the wish of the landlord. He was what is termed a tenant holding over. He was this peculiar product of the law of Landlord and Tenant on the 1st May when he found himself barred from entering his room by the usual way.

Had he a right to enter the room by that way? If he had, the conviction of the accused is correct; if he had

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not, that conviction is bad. This, therefore, is the question to be solved. Had the case arisen in England, the answer would apparently be that the tenant had not a right to enter the room. That seems to me to follow from the case of *Jones v. Foley*<sup>(1)</sup>. The law in this country is, however, different. It is true that the landlord was entitled to possession of the room; that the complainant was not strictly entitled to it; and that in occupying the room he was not acting as of right, was indeed defying the legal rights of the landlord. How then can the complainant be said to have a right to enter the room when fundamentally as between landlord and tenant he had not such a right? Is it not equivalent to saying that he has a right to do wrong? This view of the case would have prevailed with me were it not for the curious, and it may be highly beneficial, embellishment of the relations of landlord and tenant introduced by section 9 of the Specific Relief Act. Under that provision of the law a tenant holding over, who is dispossessed by any one other than his landlord, can bring a summary suit and be restored to possession. That is natural enough, for whatever his immediate position the tenant acquired possession legally and should not be dispossessed with impunity by one who has no right whatever to possession. But by the case of *Rudrappa v. Narsing-rao*<sup>(2)</sup> the very simple position above described has been imposed upon the landlord and tenant themselves, when the former dispossesses his tenant holding over, otherwise than in due course of law. This shows that the tenant holding over has a position recognised by the law and that he has a right to retain possession of the premises he occupies even against the landlord himself, until dispossessed in course of law. That being so the complainant undoubtedly had a right to enter the room.

<sup>(1)</sup> [1891] 1 Q. B. 730.

<sup>(2)</sup> (1904) 29 Bom. 213

It was urged that in the Town and Island of Bombay the English law is in force unless modified by Acts of the Indian Legislature. Assuming this to be so, yet the English law is in this matter modified or rather superseded by the Transfer of Property Act, section 9 of the Specific Relief Act and other enactments. The modern law is not, as I think, the English law modified merely in the sense that a single exception is grafted on to it. An Indian law is enacted and is so complete that for the basic principles of the law of Landlord and Tenant in India we must look to and see what is implied in the Indian Acts and not the English law.

Undoubtedly, therefore, in my view of the case, the conviction is correct. The landlord was however severely provoked, his tenant was contumacious. So the penalty imposed was negligible to a man in what we are informed is the position of the accused. That was, I think, right in this case.

I would discharge the rule.

HAYWARD, J. :—I concur. I think it has been established that the complainant's tenancy on monthly rent was extended at most to the end of February 1918. Thereafter he was holding over and no more than a tenant at sufferance, liable for use and occupation of the room to his landlord, the 1st accused. It must also, in my opinion, be held as established that the landlord, the 1st accused, did, with a view to secure possession, direct the Mistry, the 2nd accused, to block up the door of the room in the course of the alterations ordered to be made to the buildings towards the end of April 1918. The object was obviously to eject the tenant at sufferance and to put in the other tenant at a higher rent, the photographer, without having to have recourse to the uncertain process of an ejectment suit in face of the recently introduced Bombay Rent Act, II of 1918.

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The question, therefore, for us to decide is whether the action of the 1st accused coupled with that of the 2nd accused did or did not amount to restraining the tenant at sufferance from proceeding in a direction in which he had a right to proceed within the meaning of sections 339 and 341 of the Indian Penal Code.

It has been argued upon this question that the tenant at sufferance was a mere trespasser and had no right whatever to proceed to the room, and in support of this argument a case was quoted in which a landlady was held entitled in somewhat similar circumstances in England to remove the roof of the house of her tenant, the case of *Jones v. Foley*<sup>(1)</sup>. It has also been pointed out that a landlord might in such circumstances himself take possession of his property in England provided he did not use force and so infringe the Statutes passed against forcible entry referred to in the note to paragraph 1073 of the 18th Volume of Halsbury's Laws of England. It has been urged that the same law has application in this country on the authority of the case of *Bandu v. Naba*<sup>(2)</sup>, in which it was held that such dispossession by the owner was valid though it was there significantly added "subject to the provisions of section 9 of the Specific Relief Act." Reference was also made to the case of *Kantheppa v. Sheshappa*<sup>(3)</sup>, where it was held that the possession of a tenant at sufferance was wrongful within the meaning of the Indian Limitation Act.

It was, however, argued in reply that the tenant at sufferance was not a mere trespasser without any right whatever to possession and it was pointed out that he could bring a suit for possession against any other person who was nothing more than a mere trespasser

(1) [1891] 1 Q. B. 730.

(2) (1890) 15 Bom. 238 at p. 241.

(3) (1897) 22 Bom. 893 at p. 898.

even in England according to the 2nd clause of paragraph 904 of the 18th Volume of Halsbury's Laws of England. It was admitted that a person who was nothing more than a mere trespasser could not even in this country sue to recover possession on being dispossessed under section 9 of the Specific Relief Act according to the case of *Amirudin v. Mahamad Jama*<sup>(1)</sup>. But it was pointed out that a tenant at sufferance in this country was much more because he could maintain a suit for possession even against his own landlord who had evicted him otherwise than in due course of law; that is to say, otherwise than by recourse to the civil Courts according to the decision in *Rudrappa v. Narsingrao*<sup>(2)</sup>, decided with special reference to the provisions of section 9 of the Specific Relief Act. It was accordingly urged that the law obtaining under the Statutes against forcible entry in England was not the same as that resulting from these provisions of the Specific Relief Act in India.

It seems to me that this reply has been well-founded and that it would be impossible to hold that a tenant at sufferance in this country has no right whatever to proceed to his room and exercise other similar rights of possession when such a person has been expressly given the right to protect his possession even against his own landlord according to the ruling of this Court, under the provisions of section 9 of the Specific Relief Act. It would appear that the tenant at sufferance has been recognised to have these limited rights of possession in order to prevent the disorders which would otherwise arise from allowing people in this country to take the law into their own hands and endeavour to obtain possession even when lawfully due to them, without having recourse to the civil Courts. The provisions of section 9 of the Specific Relief Act would appear to

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<sup>(1)</sup> (1891) 15 Bom. 635.

<sup>(2)</sup> (1904) 29 Bom. 213 at p. 216.

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differ materially from the Statutes against forcible entry in England. It is not necessary and indeed would not be proper here to decide the substantial question between the parties, namely, whether a tenant at sufferance would or would not be a tenant within the meaning of section 9 of the Bombay Rent Act, II of 1918. That question and all other questions arising between them under the Rent Act would be matters properly for decision in regular proceedings in the civil Courts. The behaviour of the parties has no doubt been petty and entitles neither of them to much respect but it would not, in my opinion, be right to treat as merely trivial, as urged on behalf of the accused, deliberate endeavours to evade the special provision for settling peaceably disputes between landlords and tenants laid down by law. It is, on the contrary, requisite to insist by infliction of substantial punishment that landlords and tenants should not take the law into their own hands, but should proceed by regular process in the civil Courts as prescribed in this country by the Indian Legislature.

*Rule discharged.*

B. R.

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### CRIMINAL REVISION.

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*Before Mr. Justice Heaton and Mr. Justice Hayward.*

*In re VITHAL BHIMRAO KULKARNI.<sup>a</sup>*

1918.  
October 15.

*Criminal Procedure Code (Act V of 1898), section 195—Sanction to prosecute—Sanction obtained by decree-holder—Assignment of the decree—Assignee can prosecute under the sanction.*

A decree-holder having obtained a sanction to prosecute a witness of the judgment-debtor for perjury, assigned the decree. The assignee of the decree

<sup>a</sup>Criminal Application for Revision No. 213 of 1918.