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## SUKHIA

v.

## RAM PRATAP

B [SUPREME COURT, 1967 (Knox-Mawer J.), 3rd, 13th, 20th February]

## Appellate Jurisdiction

*Court—Magistrate's Court—jurisdiction—title to any right—title to land—Magistrates' Courts Ordinance (Cap. 5) ss.17, 20.*

*Land—title to land—right over land—jurisdiction of Magistrate's Court—Magistrates' Courts Ordinance (Cap. 5) ss.17, 20.*

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The appellant brought an action against the respondent in a Magistrate's Court of the First Class, for a declaration that she was the owner of a strip of land by adverse possession, for an injunction restraining the respondent from trespassing thereon and for £50 damages for trespass. The respondent filed a Defence and Counterclaim claiming that his user of the land was, "the legal user of a public right of way", an injunction

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restraining the appellant from interfering with such user, and £35 damages. The trial magistrate dismissed the appellant's claim and gave judgment for the respondent on the counterclaim. On appeal to the Supreme Court the question of jurisdiction was a preliminary issue.

*Held:* In view of the provisions of section 17 of the Magistrates' Courts Ordinance the Magistrate's Court had no jurisdiction to resolve the dispute and the judgment would be set aside.

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Case referred to: *Halka & Ram Prasad v. Sukhdeo* (1954) 4 F.L.R.116.

Appeal from a judgment of the Magistrate's Court (First Class).

[Editorial Note: This judgment is reported as touching the question of jurisdiction of magistrates' courts, though lack of particularity tends to obscure the *ratio decidendi*]

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*R. D. Patel* for the appellant.

*K. P. Mishra* for the respondent.

KNOX-MAWER J. [20th February 1967]—

This is an appeal against a decision of the Magistrate's Court of the First Class, Ba, in its civil jurisdiction.

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The Appellant holds a lease of Native Land No. 8312. This action concerns a strip of land adjoining that lease. By her Statement of Claim the Appellant sought (a) a declaration that she is the owner of this strip of land having acquired the title by adverse possession, (b) an injunction restraining the Respondent from trespassing on this land, and (c) damages of £50 in respect of such alleged trespass.

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The Respondent filed a Defence and Counter Claim in which he maintains that he is entitled to exercise certain rights in respect of this strip of land. By his prayer the Respondent claims (a) a declaration that his user is "the legal user of a public right of way", (b) an injunction restraining the Appellant from interfering with such user and (c) damages of £35.

The outcome of the suit was that the learned trial Magistrate dismissed the Appellant's claim and awarded Judgment to the Respondent upon the counter-claim together with an order for costs.

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The preliminary issue to be decided by this Court is whether the learned trial Magistrate had jurisdiction to decide this case. The relevant provisions of Section 17 of the Magistrates' Courts Ordinance (Cap. 5) are as follows :—

17. (1) A magistrate empowered to hold a court of the first class, shall, in addition to any jurisdiction which he may have under any other Ordinance for the time being in force, have and exercise jurisdiction in civil causes —

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(a) in all personal suits, whether arising from contract, or from tort, or from both, where the value of property or the debt or damage claimed, whether as balance claimed or otherwise, is not more than four hundred pounds;.....

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(e) to grant in any suit instituted in the court injunctions or orders to stay waste or alienation or for the detention and preservation of any property the subject of such suit, or to restrain torts or breaches of contracts .....

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Provided that a magistrate's court shall not exercise jurisdiction —

(i) in suits wherein the title to any right, duty or office is in question;.....

(4) If, in any suit or matter before a magistrate's court, the title to any land is disputed, or the question of the ownership thereto arises, the court may adjudicate thereon if all parties interested consent; but, if they do not all consent, the presiding magistrate shall apply to the Supreme Court to transfer such cause or matter to itself.

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It is common ground that in so far as it may be said that the title to any land is disputed or the question of the ownership thereof arises the parties to this action have consented to the adjudication thereon by the Magistrate's Court. Be that as it may it is my view that by reason of the provisions of Section 17 cited above the Court below had no jurisdiction to resolve this dispute.

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It is true that in *Halka and Ram Prasad v. Sukhdeo* 4 F.L.R. 116 the Magistrate's Court at Suva pronounced upon a right of way. Whether or not in that case the learned trial Magistrate was exercising an increased jurisdiction prescribed by the Chief Justice under Section 20 of CAP. 5 is not know.

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In the outcome, this Court is compelled to set aside the Judgment in this case and also the order for costs. Failing settlement, the only recourse is for the parties to commence a fresh action in the Supreme Court. As for these proceedings, it is ordered that each party shall bear his own costs both in respect of the Appeal and in the Court below.

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*Judgment set aside.*