

# ALLAHABAD HIGH COURT

Ghasi

Vs

Emperor

(Ryves, J.)

22.09.1917

## JUDGMENT

**Ryves, J.**

1. This is a reference by the learned Sessions Judge of Moradabad recommending that the conviction of one Ghasi under Section 447 of the Indian Penal Code and the sentence of a fine imposed thereunder should be set aside. Ghasi was tried by a Bench of Honorary Magistrates and convicted and sentenced to pay a fine of Rs. 100. He appealed to the District Magistrate, who dismissed the appeal. The matter was then taken in revision before the learned Sessions Judge, who has sent up the record with a recommendation for setting aside the conviction and sentence passed on Ghasi. In my opinion the facts as found by the learned District Magistrate in his judgment in appeal show that Ghasi was guilty of criminal trespass. The learned Sessions Judge says: In this case there is no evidence to show that the applicant Ghasi had entered upon the complainants' land with criminal intent or that he had entered at all. Mere building of houses on another person's land, in my opinion, does not amount to criminal trespass.... A person might build a house on another man's land without even entering on the land, and in such a case I do not see how he can be said to be guilty of criminal trespass." I do not agree with this proposition of law. It has been found by the District Magistrate on evidence that Ghasi bought a particular piece of land and began building on it, and then, subsequently and in spite of warnings, insisted on building on another separate piece of land the property of the complainant. It seems to me that even if he did not personally set foot on the land of the complainant, if he got people to build on it in spite of the protests of the complainant, that he did commit criminal trespass within the meaning of Section 441 of the Indian Penal Code. I do not think it is necessary that the entry on such land should be personally effected by the accused. It might well be an entry by an agent of his under his orders. I decline to interfere. Let the record be