

(1887) 02 AHC CK 0011
In the Allahabad High Court

Amir Singh and Others

APPELLANT

Vs

Naimati Prasad

RESPONDENT

Date of Decision : 03-02-1887

Acts Referred:

Citation : (1887) ILR (All) 388

Hon'ble Judges : John Edge, J;Brodhurst, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

John Edge, Kt., C.J.—It appears that on the partition of common land in which the owners of six pattis were interested, the question arose as to how the common land should be allotted. The present plaintiffs said that it should be allotted in proportion to the size of the pattis: the owners of the other paths said that it should be partitioned in proportion to the number of the pattis, i. e., into six equal shares. That objection was raised by the present plaintiffs before the Assistant Collector, who heard the evidence, examined the wajib-ul-arz, and decided that the plaintiffs were not entitled to have more than a one-sixth share in respect of their patti. From that decision an appeal was made to the Collector, and again to the Commissioner, and the Assistant Collector's decision was upheld. In the result this action was brought in the Civil Court in order to ascertain what the rights of the plaintiffs were in the common land. An objection is raised on behalf of the defendants on the ground that the proceedings in the Revenue Courts came within Sections 113 of the Revenue Act (XIX of 1873), and in that the decision of the Assistant Collector was a decision within the meaning of Sections 114 of the same Act, consequently the present action was barred by Sections 13 of the Civil Procedure Code. I think the whole thing turns upon the decision of the question whether the objection which was raised in the Revenue Court, was an objection Which raised a question of title or proprietary right? I think that the question involved there, in the objection taken before the Assistant Collector, must necessarily have raised a question of title or proprietary right. It

is true that the title and proprietary right of the plaintiffs in their own patti was not questioned, nor were the titles and the proprietary rights of other pattidars in their own pattis ever questioned. The question was, how was the common land to be divided and what were the rights of the parties as to the quantum of common land to which they were entitled? That question must necessarily be decided by some custom or rule of law, and if it is to be decided by custom or by rule of law, it must involve a question of title or proprietary right. The plaintiffs, in order to succeed, must have said that by custom or rule of law they were entitled to a larger area in the common land than was allotted to them. I cannot see how this could have been determined without a question of title or proprietary right being raised between the owners of the various pattis, not in respect of their pattis, but in respect of the common land. That being so, I think this case falls within Sections 13 of the Civil Procedure Code, and this action is barred. I agree with the Judge below in the observation made by him that any mistakes of procedure did not affect this question. The appeal is dismissed with costs.

Brodhurst, J.

2. In my opinion the suit has been properly dismissed by the Lower Appellate Court, and I concur in dismissing the appeal with costs.