

(1910) 07 CAL CK 0049
In the Calcutta High Court

Bhagwat Sahai

APPELLANT

Vs

Bipin Behari Mitter

RESPONDENT

Date of Decision : 15-07-1910

Acts Referred:

Citation : (1910) ILR (Cal) 918

Hon'ble Judges : Macnaghten, J;Collins, J;Arthur Wilson, J;Ameer Ali, J

Bench : Full Bench

Judgement

Arthur Wilson, J.—This is an appeal from the judgment and decree of the High Court of Calcutta, dated the 5th May 1905, which reversed those of the Subordinate Judge of Gaya, dated the 4th February 1904.

2. The sole question for decision on the appeal is whether the appellants are entitled to partition of certain properties as against the opposing respondents.

3. In order to dispose of this question, it is sufficient to deal very broadly with the facts. It is enough to say that the appellants are proprietors of a mokarari interest in the properties in question, the opposing respondents being owners of a fractional share in the zemindari interest in the same properties.

4. In the judgment appealed against it was held, in accordance with an earlier decision of a Full Bench of the same Court, that the fact of the party on one side of the dispute being in a lower grade of title than those on the other side was not necessarily a bar to partition.

5. Their Lordships agree with the opinion of the Full Bench, in the case referred to, that the right of partition exists when two parties are in joint possession of land under permanent titles, although those titles may not be identical. It is unnecessary for their Lordships to consider whether a right to partition exists in any other case, and they are desirous to avoid indicating any view upon any such subject.

6. In the present case all parties concerned in the appeal have joint shares in the

land, of course under different titles, and this has been recognised by the learned Judges whose decision is under appeal. But those learned Judges held that the right of partition, which would otherwise have belonged to the appellants, the mokararidars, was lost by reason of the fact that their mokarari is liable to forfeiture in certain contingencies, and therefore is lacking in the permanence of interest necessary to support a claim for partition. Their Lordships are of opinion that the distinction thus introduced cannot be supported.

7. The title of the appellants is a permanent title, though liable to forfeiture in events which have not occurred, and the rights incidental to that title must, in their Lordships' opinion, be those which attach to it as it exists, without reference to what might be lost in future under changed circumstances.

8. Their Lordships will humbly advise His Majesty that this appeal should be allowed, and that the judgment and decree of the High Court should be set aside and that of the Subordinate Judge restored with costs in the Court below.

9. The opposing respondents will pay the costs of the present appeal.