

(1918) 05 CAL CK 0031
In the Calcutta High Court

Brojendra Kishore Roy Chowdhury

APPELLANT

Vs

Kali Kumar Chowdhury

RESPONDENT

Date of Decision : 10-05-1918

Acts Referred:

Bengal Estates Partition Act, 1876 — Section 112
Estates Partition Act, 1897 — Section 6

Citation : AIR 1919 Cal 815 : (1919) ILR (Cal) 236

Hon'ble Judges : Teunon, J;Richardson, J

Bench : Division Bench

Judgement

Teunon, J.—This appeal arises out of a suit brought by the plaintiff to have it declared that certain partition proceedings now being conducted by the Revenue Authorities of Assam, under an order of the Board of Revenue of Eastern Bengal and Assam, dated 18/27th July, 1911, are ultra vires and contrary to the provisions of the Assam Land and Revenue Regulation I of 1886.

2. It appears that in the District of Sylhet, Dassona, taluk No. 3 Alam Raja and 5 other taluks, being permanently settled estates have specific shares in a mouzah named Dhal; the share of Alam Raja in that mouzah being 6 annas 15 gandas.

3. All the taluks have lands or shares in other mouzahs but in no other mouzah is the said taluk Alam Raja a co-sharer with the other five estates or any one of them.

4. The appellant for partition who is the defendant appellant before us, was the purchaser at a revenue sale in the year 1890 of the residuary share in Alam Raja. In the parent estate there had been opened three separate accounts known as Nos. 38, 47 and 49. Plaintiff-respondent No. 1 is a co-sharer in separate account No. 38, while he and the other plaintiffs-respondents Nos. 2 to 4 are co-sharers in one or more of the remaining five estates.

5. The appellant made his application for partition to the Subdivisional Officer of Sunamganj on some date in 1909. The application is one for "imperfect partition

of estate No. 3 Alam Raja, though no doubt in the remark column the applicant indicated that what was more particularly required in his interest was a division of mouzah Dhal between his taluk Alam Raja and the other 5 taluks and then a partition of the lands allotted to his taluk between himself and his co-sharers the owners of the separate accounts. To separate account No. 49 he proposed to assign the 47 hals odd in respect of which the account had been opened, and from the remaining lands allotted to his taluk's 6 annas 15 gandas share, he desired to have carved out for himself a 5 annas 15 gandas share of the land, or (vide paragraph 2 of the plaint) that share in the firm land and a 5 annas 1 ganda 1 kara share of the lands covered by water, leaving the remaining lands to separate accounts Nos. 38 and 47. Some reference having been made to a previous suit No. 753 of 1900, it may be here incidentally observed that plaintiff No. 1's interest in separate account No. 38 has not been affected by the decree passed in that suit on compromise between the plaintiff of that suit (the present appellant) and the then defendants Nos. 1, 2, 4 and 5 (not parties to the present suit or appeal).

6. The provisions of law regarding the partition of revenue-paying estates in Assam are to be found in Chapter VI of the Assam Land and Revenue Regulation. The power to make partitions in the case of such estates is conferred upon the Revenue Authorities and by Section 154(1)(d)(e) and (f) the jurisdiction of the Civil Courts is excluded, except in the special case set out in Sub-clause (e).

7. Appellant holding more than 8 annas interest in taluk No. 3 Alam Raja it is not disputed that u/s 97 he may claim from the Revenue Authorities what in Section 96 is defined as an imperfect" partition of that estate between himself and his co-sharers therein. The contention of the plaintiffs respondents then are: (i) that he cannot under the Regulation claim or obtain a division as between taluk No. 3 Alam Raja and the other 5 taluks of the lands in mouzah Dhal common to these 6 estates; and (ii) that as between himself and plaintiff respondent No. 1 he cannot obtain a partition of the lands appertaining to taluk No 3 Alam Raja in mouzah Dhal, without partitioning the lands of that estate in other mouzahs.

8. With regard to the second contention, which can be raised only by plaintiff respondent No. 1, it is sufficient to say that, as we have pointed out, the appellant's application was one for partition of the whole estate and questions as to the manner in which the partition is to be carried out must be raised before the Revenue Authorities. The special objection taken here by plaintiff No. 1 may be taken before them and will doubtless be decided with due regard to the provisions contained, for instance, in Section 100, and Sections 105 to 108.

9. The 1st contention is based on the absence from the Regulation of the special provision regarding lands common to a number of estates to be found in Section 6 of the Bengal Estates Partition Act V of 1897. But the case provided for in that section is not the case with which we have here to deal. Here appellant seeks, and is admittedly entitled to seek, partition of his own estate taluk No. 3, and the question is whether incidentally to that partition and in order to complete the

same, he is entitled to obtain from the Revenue Authorities the separation and allotment to his estate of its proportionate share in lands common to that estate and five other estates. Now that is the case for which specific provision was made in Section 112 of the Bengal Estates Partition Act 1876, the Act repealed and replaced in Assam by the Regulation. In the district of Sylhet, instances of mouzahs appertaining in defined shares to more estates than one are not infrequent. With this knowledge and the provisions of Section 112 of the old Act before them, it is not likely that they, the framers of the Regulation, overlooked and did not intend to provide for cases such as the present. The sections in question do not in terms prohibit the separation and allotment of such common lands, and I can therefore find no difficulty in reading the language used as permitting what is necessary and essential to the completion of the partition which the applicant desires and is entitled to claim. This view, I may farther observe, appears to find support in the decisions reported in *Abdul Khaliq Ahmed v. Abdul Khaliq Chowdhry* ILR (1896) Cal 514 and *Sarat Chandra Purkayestha v. Prokash Chundra Das Chowdhury* ILR (1897) Cal. 751.

10. Lastly, in view of the provisions of Section 97(1)(b), it is contended that before he can obtain the division of the common lands in question, the applicant must obtain the consent of recorded co-sharers holding in the aggregate more than one half share in the six estates, or at least in the common lands to be found in mouzah Dhal. But the section and clause do not appear to require that the applicant and those consenting to his application, should have a preponderating interest in each parcel of land sought to be divided, and it seems sufficient that the applicant should hold as he does a share which is more than half of the estate Alam Raja, whose proportionate share in the common lands is to be carved out.

11. For these reasons I am of opinion this appeal should be decreed and the suit of the plaintiffs dismissed with costs (and interest thereon at 6 per cent, throughout).

Richardson, J.

12. I agree. The appellant is clearly entitled under the Regulation to apply for the partition, perfect or imperfect, of the estate in which he is interested, No. 3 Alam Raja. Mouzah Dhal appertains in common to that estate and five other permanently settled estates. As incidental to the partition which the appellant seeks, a share of mouzah Dhal must be separately allotted to estate Alam Raja. I can find nothing in the Regulation to prevent that being done. Proviso (b) of Section 97(1) cannot stand in the way. The appellant has satisfied the condition therein laid down by owning more than one half of Alam Raja. The proprietors of the other five estates have, so far as I can see, no right to object to the allotment to estate Alam Raja of its proper share of mouzah Dhal. If they so please they may continue to hold the remainder of the mouzah in common.