

(1972) 08 AHC CK 0017
In the Allahabad High Court
Case No : Special Appeal No. 409 of 1966

Jairam Singh and Others	Vs	APPELLANT
Settlement Officer (Consolidation) and Others		RESPONDENT

Date of Decision : 11-08-1972

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176

Citation : AIR 1973 All 61 : (1972) 42 AWR 698

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Advocate : V.K.S. Chaudhari and B.B.P. Singh, for the Appellant; R.N. Bhalla, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This appeal arises out of a proceeding for partition of a holding held by the consolidation authorities.

2. Admittedly, the appellant held one third share in the holding in dispute; one third was held by respondents Nos. three and four while the remaining one third was held by Appellants Nos. 2 to 5. The consolidation authorities proceeded to partition this holding in accordance with the admitted shares, after ignoring a decree dated 9th March, 1956, passed by the civil court in a suit (No. 892 of 1955) filed u/s 176 of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) for the division of this very holding. The Settlement Officer (Consolidation) held that since the civil court decree had not been enforced inasmuch as the final decree had not been passed by the revenue court the same had no binding effect. The Settlement Officer (Consolidation) confirmed the actual division of the holding made by the Consolidation Officer.

3. Aggrieved appellant No. 1 instituted a writ petition in this Court. The principal argument raised before the learned Single Judge was that the previous partition decree was binding on the parties. This plea was repelled and the writ petition

was dismissed.

4. In present appeal, Mr. V. K. S. Chaudhary, learned counsel for the appellants has urged that the civil court decree was binding. In 1955, when the suit for partition u/s 176 of the Act was instituted the matter was governed by Sections 176 to 182-B of the Act. Dealing with these provisions a Division Bench of this Court in *Nathu Singh v. Dular Singh*, 1971 RD 11 held that the prescribed procedure was that a suit for partition was to be instituted in a civil court. The civil court was to grant a preliminary decree indicating the shares of the parties in the holding in dispute. After that its jurisdiction was exhausted; and the matter had to be sent to the Collector for drawing up a final decree. It was held that the civil court had no jurisdiction to pass the final partition decree, that was a matter falling entirely within the jurisdiction of the Collector.

5. In the present case we find that soon after the institution of the suit in the civil court the parties filed a compromise praying that the parties to the suit may be allotted shares in accordance with that compromise. The compromise mentioned the plots which the parties agreed to be allotted to each branch; and it appears that the civil court passed a decree in terms of the compromise. It is apparent that the matter was never sent to the Collector for final partition of the holding or separation of the shares and for passing a decree on terms of the compromise application. In view of the Division Bench decision in *Nathu Singh's* case 1971 RD 11 the decree passed by the Civil Court will be without jurisdiction and so not operative or binding between the parties.

6. Learned counsel for the appellants, however, relied upon a Full Bench decision in *Jogodishury Debea v. Kailash Chundra Lahiry* ILR (1897) Cal 725 (FB) and urged that where no division of revenue is sought for, the civil court can grant a decree for partition and a decree for possession in respect of a share. Reliance was also placed upon *Radha Kishun and Another Vs. Bhola Chaudhuri and Others*, where it was held that Section 54, CPC does not apply to a suit for partition of a revenue paying estate when no separate allotment of revenue is asked for. The principle laid down in these decisions is that if the suit did not involve the separation of the land revenue the matter need not go to the Collector and such a suit for partition would be exclusively decided by the civil court. Assuming that this is the correct situation in law, the position in the present case is different. The suit u/s 176 of the Act is governed by the statutory provisions contained in Sections 176 to 182-B.

Section 182-B provides:

"Subject to the provisions of Sections 178 to 182 the division of a holding or the separation of the share therein of a bhumidhar or sirdar shall be made by the Court in accordance with the principles that may be "prescribed".

Rules 156 to 164 are the relevant rules. In this behalf.

Rule 156 provides :

Sections 176 to 182. Division of Hold-tags -- (1) A plaint for division of a holding u/s 176 shall contain the particulars (1) to (6) of Rule 127 and the land revenue payable for the holding.

This would show that the plaint itself had to mention the land revenue payable in respect of the holding which is sought to be partitioned. Rule 158 provides:

"In making a division to which Sub-section (1) of Section 178 does not apply the provisions contained in rules 127 to 132 shall apply *mutatis mutandis*."

7. The present is not a case covered by Section 178 of the Act which applies to the cases of division of a holding the aggregate area of which does not exceed three and, one-eighth acres. To the facts of the present case Rules 127 to 132 are applicable. Rule 157 says that

"157. Before making a division the court shall-

(a) determine separately the share of the plaintiff and each of the other co-tenure-holders,

(b)

(c) make valuation of the holding of holdings in accordance with the rent-rate applicable to each plot in the holding, and

(d) Determine separately the value of the share of the plaintiff and each of the other co-tenure-holders."

Under this rule the share of each co-tenure-holder is determined and its valuation is fixed. It is thus clear that in view of these statutory provisions a suit for the division of a holding u/s 176 of the Act, expressly involves division of the land revenue payable on the holding. The plaintiff has no choice in the matter. If he wants to avoid the separation of the land revenue of the holding, the suit could not be validly decreed. In this view of the matter it is clear that the decisions of the Calcutta High Court and Patna High Court are not applicable to a suit u/s 176 of the Act. In view, of the Division Bench decision of our Court mentioned above the civil court had no jurisdiction to pass the final decree even though it was based upon a compromise between the parties. That decree was without jurisdiction and hence not enforceable.

8. In the next place it was submitted that the compromise application which was the subject-matter of the decree would operate as a family arrangement. This is a mixed question, requiring several facts. No such plea was taken at any stage. Even a copy of the compromise application has not been annexed with the writ petition. We do not know its contents. There is no allegation in the writ petition that there was any pre-existing dispute between the family members which was settled by the compromise. The compromise for partition cannot as a matter of law operate as a family arrangement. In the circumstances, the appellants cannot successfully raise this plea for the first time in the special appeal.

9. It was next urged that in title proceedings under the U. P. Consolidation of Holdings Act the matter had gone to the Deputy Director of Consolidation and he held that the partition decree passed by the civil court was binding. It is well settled that in order to establish a plea of res judicata it is necessary to file a copy of the decree or judgment on which such a plea is based. The copy of the judgment of the Deputy Director of Consolidation has not been filed and as such this plea cannot be entertained. Reference has been made to a passing observation in the judgment of the Settlement Officer (Consolidation) that "even the learned Deputy Director in his judgment has held that the decree had the binding effect on the contesting parties". But that cannot constitute a valid basis for the plea of res judicata, for the additional reason that this point was not taken as such in the writ petition or in the grounds of appeal. It is noticeable that the Settlement Officer (Consolidation) did not himself accept the plea that the partition decree was binding. If the plea had been taken at the appropriate stage the parties may have produced material and alleged facts in rebuttal

10. In fee end Mr. Chaudhury urged that the consolidation authorities have made a mistake of calculation in making allotment of chaks. This again is a point which does not appear to have been raised before the learned Single Judge and we cannot entertain it for the first time in special appeal. If there was any error in the calculation of the shares it was always open to the parties to approach the Settlement Officer and ask him to correct that mistake if the mistake is clerical or accidental in nature.

11. The various points raised in support of this appeal fail. The appeal is accordingly dismissed with costs.