
(1908) 07 CAL CK 0009
In the Calcutta High Court

Janki Dobey

APPELLANT

Vs

Kirtarath Roy and Others

RESPONDENT

Date of Decision : 01-07-1908

Acts Referred:

Estates Partition Act, 1897 — Section 44, 46, 47, 48

Citation : 4 Ind. Cas. 316

Hon'ble Judges : Mitra, J; Bell, J

Bench : Division Bench

Judgement

1. This is an appeal in a suit for rent. Two questions were raised in the Court below: First, that the plaintiffs ought to have withdrawn the amount deposited in Court; and, secondly, the entry in the partition paper which showed the amount of rent payable by the defendant was inadmissible.

2. The admissibility of the batwara papers as evidence of the rent payable by the defendants cannot be doubted. The partition was effected under Act V (B.C.) of 1897. u/s 44 of the Act a partition Deputy Collector has the power of a Survey Officer under the Bengal Survey Act (Act V of 1875, B.C.) and of a Revenue Officer preparing a record-of-rights under Chap. X of the Bengal Tenancy Act. The procedure as to the preparation of the rent roll and the publication thereof is laid down in the following sections. Sections 46 and 47 lay down almost the same rules as are laid down under Sections 103 and 103-A of the Bengal Tenancy Act. Section 48 treats of the local publication of the record and furnishing to the landlords as well as the tenants copies of the entries relating to tenures or holdings. The rules of the Board of Revenue referred to in Section 48 corresponds to the rules of the Local Government framed u/s 103-A. We have, therefore, no doubt that entries in partition papers as to the amount of the rents payable by tenants are evidence in the same way as entries in the record-of-rights prepared under the Chap. X of the Bengal Tenancy Act are admissible as evidence u/s 103 B. Prima facie they are evidence against the tenants, though that evidence may not be very valuable.

3. The only question argued by the learned Vakil for the appellant is that there is no direct evidence on the record as to the local publication of the record such as is prescribed by Section 103-A. That is so, but the evidence in this case shows that the defendants must have obtained copies of the entries as prescribed u/s 148 and he did object. The Deputy Collector tried the dispute between the parties. Absence of the certificate of local publication is not sufficient to show that there was no publication; On the other hand we must presume that the Deputy Collector did his duties according to the Act and the rules prescribed by the Board of Revenue. A presumption should be made of the regularity of the proceedings of an officer conducting a partition. The contention, therefore, as regards the admissibility of the partition papers must be rejected.

4. As regards the first point discussed in the lower Court, the contention raised is that the plaintiffs ought to have withdrawn the amount deposited in Court. This deposit was made in the name of the plaintiffs as well as other co-sharers of the plaintiffs. The plaintiffs could not have withdrawn the amount without the help and co-operation of their co-sharers. The deposit made was also evidently insufficient.

5. The suit was, therefore, properly instituted and decreed by the lower appellate Court.

6. But we think the defendants having deposited the rent and this suit being in the presence of all co-sharers, the plaintiffs should first attempt to obtain from the Court such portion of the amount deposited as would correspond to the share of the plaintiffs, and if there be any balance left the plaintiffs would be entitled to proceed for it against the defendants. We do not think that there would be any difficulty in the plaintiffs realising a portion of the amount deposited in the Court corresponding to their share.

7. With these observations we dismiss the appeal with costs.