
(1930) 03 CAL CK 0041
In the Calcutta High Court

Kedar Nath Sanyal and Others

APPELLANT

Vs

Naresh Chandra Ghosh and Others

RESPONDENT

Date of Decision : 17-03-1930

Acts Referred:

Estates Partition Act, 1897 — Section 119

Citation : AIR 1931 Cal 29

Hon'ble Judges : Suhrawardy, J;Costello, J

Bench : Full Bench

Judgement

Suhrawardy, J.—This appeal by the defendant arises out of a suit for declaration of title and for permanent injunction restraining the defendant from taking possession of certain lands allotted to him under proceedings taken under the Estates Partition Act of 1897 B. C. The facts are that Touzi. No. 4342 Mauza Jabra which was under partition by the Collector of Dacca comprises two chaks, Banda Tan Chak and Banda Dop Chak. The plaintiff had four annas odd share in the mauza. He purchased a four annas share of a former proprietor in the Banda Dop Chak. Before the partition was carried out he laid claim to the four annas share in the Banda Dop Chak. The Deputy Collector in charge of the partition found that as a matter of fact the plaintiff had an eight annas odd share as recorded in the settlement record which also showed plaintiff's possession to the extent of eight annas odd share of the Dop Chak. But as he found that in the D Register in the Collectorate, which I understand is the Land Registration Register the plaintiff was not recorded as the proprietor of the four annas share in Dop Chak: he ordered that the takta representing the four annas share be placed next to the takta allotted to the plaintiff for four annas odd share and allotted it to the defendant. It appears from the D Register of the Collectorate that one Mr. Pink, as receiver to the estate of Chandra Nath Saha, claimed this share but no evidence was adduced in his behalf in support of the claim. As no counter-claim had been put in respect of this share the Deputy Collector ordered that the name of Mr. Fink be registered in respect of it. The plaintiff thereafter brought the present suit for declaration of title as stated above. Both the Courts below have

agreed in finding title with the plaintiff and in decreeing the suit. In the appeal by the defendant before us, two points have been taken : (1) that the suit is barred u/s 119, Estates Partition Act 1897; (2) that the suit is barred by limitation under Article 14, Lim. Act. It [may be noted that these two objections were taken in the trial Court and overruled. They were not pressed in the lower appellate Court and the judgment of the learned District Judge proceeds solely on merits. As the questions raised refer to the jurisdiction of the Court we allowed them to be argued before us. In my judgment both these "objections should be overruled.

2. As regards Section 119, that section deals with jurisdiction of the civil Court to question any order made under Sections 20, 30, Chaps. 5, 7, 8, 9, 10 and Sections 107 and 117. The objection raised before us is that u/s 57, one of the sections under Chap. 8, the suit does not lie, Section 57 deals with the procedure relating to allotments. The Deputy Collector will consult all the proprietors who are present and hear and after such inquiry as he may consider necessary, dispose of any objecting which they may urge presumably to the mode of partition, as all objections relating to title and possession are dealt with under Chap. 4. Chap. 8, is headed "Making of partition by the Deputy Collector and approval thereof by the Collector." After he has done so the Deputy Collector shall proceed to determine how the lands of the parent" estate should be partitioned into the separate estates and all matters relating to such partition. That section therefore deals with the mode of partition and the allotment by the Deputy Collector of different sahamas. An order passed by the Deputy Collector in the exercise of the powers vested in him u/s 57 cannot be questioned in a civil suit. The object of Section 119 has been stated in the case of Janki Nath v. Kali Narain [1910] 37 Cal. 662 to exclude the jurisdiction of the civil Court where the question relates to the mode of determination of Government revenue or to details of partition and it does not oust the jurisdiction of the civil Court in matters which involve questions of title. This view has recently been supported by my learned brother Page, J., in Mt. Matangini Ghose and Others Vs. Mt. Monmohini Ghose and Others, . But it is argued that a question of title raised by a party not a party to the partition proceedings may be outside the scope of Section 119, but when a co-proprietor claims title to any portion of the parent estate and an allotment is made overruling this, objection, he is debarred by Section 119 read with Section 57 from bringing a separate suit.

3. This objection was also considered in Janki Nath Chowdhry v. Kali Narain Roy Chowdhry [1910] 37 Cal. 662 and overruled, it being held that a co-proprietor is in the same position as a stranger with reference to suits for declaration of title. This view has been endorsed by the Patna High Court in the case of Ajodhya Prasad v. Ramkhelawan Singh AIR 1926 Pat. 421 a case very similar to the one before us. We have been referred to the decision in Ajodhya Prasad and Others Vs. Ramkhelawan Singh and Others and Daulat Singh and Others, . In that case there is some observation by Fletcher, J., adversely criticizing the view previously expressed in several cases that the orders made by the revenue authority are only conclusive in so far as they relate to the Government revenue and details of

partition. But the real decision in that case rested upon a peculiar set of facts. The plaintiff in that case was co-proprietor. So long as the proceedings were in the Collectorate he never objected that any lands within the parent estate exclusively belonged to him. All the objections made were with regard to the mode of partition and overruling those, allotments were made to separate estates under the partition. Thereafter the plaintiff brought a suit on the ground that the partition by the Deputy Collector followed a settlement record which was the result of some sort of fraud practised upon the plaintiff. Fletcher, J. held that the result of the plaintiffs' suit would be to allow the plaintiffs to retain lands allotted to them on the footing that the lands sued for formed a portion of the estate under partition and enabled them to recover a portion thereof awarded to the defendants from them, which the learned Judge considered to be highly unjust and inequitable. Richardson, J., also thought the same and observed that the dispute in that case was as to what particular lands were held in common tenancy not as to plaintiff's interest in those lands when once the lands were determined. On the merits also the learned Judge said that he was very doubtful whether the plaintiffs ought to succeed. That case is no authority for the broad proposition that when an order purports to have been passed u/s 57, Estates Partition Act, no one has any right to bring a suit for declaration of title in respect of lands allotted under partition. I do not find myself in agreement with some of the observations made by Fletcher, J., but as the case is not an authority in support of the objection raised before us, I refrain from discussing it further.

4. In the case before us the learned Subordinate Judge passed a decree u/s 27 of the Act. What really happened in this case is that before an order was passed by the Deputy Collector making allotments the plaintiff objected that he ought to be given a four annas share in the Dop Chak. That objection apparently was made u/s 22 of the Act, Section 23 provides that if any such objection raises any question of rights or title or of extent of interest, and such question has not been already determined by a Court of competent jurisdiction, the Collector may hold an enquiry as to the possession of the applicant and may instead of rejecting the application direct that the partition proceedings shall proceed or direct that such proceedings be postponed for four months. Section 25 says that if a suit is brought in a civil Court after the lapse of four months and if the Collector acts u/s 24 or that a proceeding has been recorded u/s 29 admitting the application for partition by any person claiming any right or title in or to a parent estate, such suit shall not have the effect of staying any proceedings taken under the Act for the partition of the estate. Section 26 gives the form of the decree to be passed by the civil Court in a case when the suit is brought while the partition proceedings are in progress. Section 27 provides the form of the decree to be followed in civil suits after partition proceedings have been completed. These sections, it may be noted, are under Chap. 4 which is not one of the chapters mentioned in Section 119.

5. If we look closely to the object and scope of the Partition Act it will appear that the Collector acting under it has in no case been empowered to inquire into

questions of title raised by a party interested in the partition. Section 44, Partition Act, deals with the powers of the Deputy Collector and invests him with those exercisable by a survey officer under the Bengal Survey Act of 1875 and by a revenue officer under Chap. 10, Ben. Ten. Act of 1885. u/s 23, if an objection as to title is raised before the Collector he has to look only to the fact of possession of the applicant for partition. Similarly u/s 88, if a dispute or doubt is found to exist as to whether any land forms part of the parent estate, the Deputy Collector shall inquire into the fact of possession. It will be absurd to hold that the order of an officer who has not been invested with power to enquire into questions of title should deprive a person having title in the property from seeking his remedy in the civil Court. In this case it seems to me that the objection preferred by the plaintiff was u/s 22 and he has the right to bring a suit in the civil Court for declaration of his title. The proceedings under the Partition Act does not moreover seem to have been completed as the defendant has not yet been put in possession of the land in suit u/s 94 of the Act. In my judgment the right which a person possesses under the general law of "bringing a suit in the civil Court for declaration of title is not in any way affected or curtailed by the Partition Act. It is said that the effect of the order of the civil Court will be to interfere with the order passed by the Deputy Collector u/s 57 which cannot be questioned in a civil suit. It may be so; and a civil Court is entitled to declare the title of the plaintiff before it and request the Collector to award to the plaintiff a share corresponding to the title found. In *Dewan Abdool Reza v. Jebunnissa Bibee* [1871] 16 W.R. 34 it was held that in a suit for declaration of title in which the plaintiff also claimed allotment of his share, as it was found that the plaintiff's title was established he was also entitled to a precept to the Collector directing him to award to the plaintiff a share corresponding with that title. The Collector may also proceed under provisions similar to those mentioned in S. 89 of the Act. We are not concerned with what the effect of the decree of the civil Court may be, but Sections 26 and 27 provide the form of the decree in cases in which partition is in progress or has been completed.

6. As regards the second ground relating to limitation, the suit having been brought more than one year after the above order of the Deputy Collector, sufficient answer has been given to it by the observations made previously. Section 57, Partition Act, is no bar to the plaintiff's bringing a civil suit for declaration of his title even after the order is made. What the Deputy Collector did in this case is that he overruled the plaintiff's objection and simultaneously passed an order which looks as if it was made u/s 57, Partition Act. By this means it is not possible to deprive the plaintiff of his right under the law or curtail the period of limitation within which he is allowed to bring a suit. When an objection is made with regard to share in the parent estate the Deputy Collector should at least inquire into the fact of possession. The settlement record was before the Deputy Collector which recorded the plaintiff in possession and as there was no evidence before him against it he could not find, and has not found, against plaintiff's possession. He relied simply on the entry in the land

registration register; and as I have pointed out that entry in itself carried no value whatever, I am inclined to hold that the order of the Deputy Collector in this case was entirely unwarranted by law. But whatever that may be, I have no doubt that the suit is one for declaration under 8s. 26 or 27, Partition Act. In this connexion reference may be made to the observations of the Judicial Committee in *Dhakeshwar Prasad Narain Singh v. Gulab Kuer* AIR 1926 P.C. 60. There also the suit was against an order effecting partition and the question of limitation under Article 14, Lim. Act, was raised. Their Lordships made the following observations:

With regard to the objection put forward by counsel for the respondents that the plaintiff's suit is barred under Article 14, Schedule 1, Lim. Act, their Lordships desire to observe that this suit is not brought for the purpose of setting aside any order of the revenue Court; it is simply an action in ejectment, its main purpose being to recover possession of certain lands allotted to the plaintiff.

7. It may also be noted that the partition proceedings were finally confirmed by the Board of Revenue on 24th August 1922 and the present suit was brought on 21st December 1922. I entirely agree with the view expressed in *Ajodhya Prasad and Others Vs. Ramkhelawan Singh and Others and Daulat Singh and Others*, upon this question and the other questions raised in the suit. In my judgment this appeal should fail and be dismissed with costs and I order accordingly.

Costello, J.

8. I am of the same opinion. With regard to the main contention which was urged before us on the question of jurisdiction, I think the right view of the matter is that the general scheme of the Estates Partition Act is that it is only the questions relating to the apportionment of revenue that are really exempted from the jurisdiction of the civil Courts. It seems quite clear on the authorities of which there are a large number that all questions relating to title to land and possibly orders determining the shares of individual proprietors are capable of being decided in civil Courts. In the present case the subject-matter of the suit was a question of title. Therefore it was quite competent to the civil Court before which it came to deal with the matter in the way it has done.