

(1935) 07 CAL CK 0051

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2048 of 1932

Maharaja Sasi Kanta Acharjee Choudhury

APPELLANT

Vs

Rajendra Kumar Chakravarty and Others

RESPONDENT

Date of Decision : 18-07-1935

Acts Referred:

Citation : (1935) 07 CAL CK 0051

Final Decision : Dismissed

Judgement

Nasim Ali , J.—Estate No. 2 of the Mymensingh Collectorate was partitioned by the Partition Deputy Collector into separate Estates, on 24th February, 1926. We are informal that the partition proceedings are still pending in appeal before the Collector. By the order of the Partition Deputy Collector, under sec. 57 of the Estates Partition Act, the Plaintiffs in the suit, out of which this appeal arises in their share got Rs. 38-1 as assets out of a Mouza called Daribhabakhali. The Deputy Collector partitioned the Estate on the footing that the Estate was not divided by private arrangement formally agreed to by all the proprietors and that the proprietors were not in possession of separate lands representing their interest in the Estate. On 7th September, 1928, Plaintiffs commenced the present suit in the Court of the Subordinate Judge at Mymensingh for a declaration that the interest in the parent Estate is the proprietary right over certain specific lands only in one Mouza, viz., Mouza Daribhabakhali in pursuance of a private arrangement formally made and agreed to by all the proprietors of the Estate and also a decree made by the civil Court in partition Suit No. 91 of 1890. They accordingly prayed for a declaration that they were entitled to have their names registered under the provisions of the Land Registration Act to the extent of their interest and to have the specific lands in their possession assigned to them as a separate Estate. Only Defendant No. 1 contested the suit. His main defences are:--

(1) that the Estate No. 2 was never amicably partitioned between the proprietors thereof, but that for convenience of possession some co-sharers hold some

mouzas exclusively and similarly other co-sharers hold some other mouzas exclusively and the remaining mouzas are held by all the co-sharers jointly;

(2) that the Civil Court has no jurisdiction to interfere with the allotments made by the Partition Deputy Collector.

2. The trial Court found that there had been an amicable partition as alleged by the Plaintiffs and decreed the suit. On appeal by the Defendant No. 1 to the lower Appellate Court, the learned Additional District Judge has affirmed the finding of the trial Court that there was a private partition. He however rejected the Plaintiffs' prayer for a declaration that they were entitled to have their names registered in respect of the specific lands, belonging to them in only one Mouza under the provisions of the Land Registration Act. Subject to the above modification he has affirmed the decree of the trial Court. Hence the present second appeal by Defendant No. 1.

3. Mr. Roy, on behalf of the Appellant, has raised two contentions:--

(1) that the present suit is not maintainable in law; and

(2) that the decree passed by the lower Appellate Court is not warranted by law.

4. As regards the first contention. Mr. Roy has put his argument thus: Plaintiffs' prayer for a declaration about the extent of their interest in the Estate is based on the story of private partition. The Partition Deputy Collector rejected the said story, consequently the same matter cannot be re-agitated in the Civil Court. Plaintiffs cannot get a declaration about the extent of their interest from the Civil Court. Now, under sec. 9 of the CPC the Civil Courts have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is either expressly or impliedly barred. It cannot be disputed that the present suit is a suit of a civil nature. The question then is whether the present suit is barred expressly or impliedly by any other law. Mr. Roy's contention is that it is barred by sec. 119 of the Estates Partition Act. That section lays down that certain orders made by the partition authorities under the Estates Partition Act cannot be set aside by the Civil Court. An examination of the provisions of that section shows that the orders mentioned therein relate to the mode of division of Government Revenue or to the details of partition. Sec. 119 therefore excludes the jurisdiction of the Civil Court when the question raised before it relates to question of apportionment of Government Revenue between the separate Estates formed out of the parent Estate or to the details of partition, but it does not oust the jurisdiction of the Civil Court in matters which involve questions of title. [See *Matangini Ghose v. Monmohini Ghose* ILR 55 Cal. 392 (1927) and *Kedar Nath Sanyal v. Naresh Chandra Ghose* 52 C.L.J. 247 (1930)]. Now, in the present suit the question raised is a question about the extent of Plaintiffs' interest in the Estate. " Although in popular language the extent of interest of a person in an Estate would ordinarily denote his share in the Estate and a question of extent of interest would be equivalent to a question of the extent of such share, according to the phraseology adopted in the Act the extent of interest of a person in the

Estate may be represented by specific lands, and consequently a dispute as to the extent of such interest may necessarily involve a question as to the extent or quantity of land which represents such interest." [See Raghunath Pershad Narain Singh v. Khajeh Mohamed Gawhar Ali 2 C.L.J. 351 at p. 356 (1905)]. If such a question is raised before the Collector, he determines it under sec. 23. But sec. 25 contemplates a suit in the Civil Court raising the same questions as are referred to in sec. 23. Therefore when the Collector has determined under sec. 23, cl. (a) to proceed with the partition after the enquiry held by him into the question of possession, all the proceedings thereafter are necessarily subject to and controlled by the decree in the Title suit contemplated by sec. 25. [See Raghunath Pershad's case 2 C.L.J. 351 at p. 356 (1905)]. Secs. 23 to 27 of the Act show that a Civil Court has jurisdiction to decide questions of title or extent of interest, not only between a proprietor and a stranger, but also between proprietors themselves. The provisions of the Act therefore do not empower the revenue authorities to determine finally the question of extent of interest or of right or title. The suit is therefore not barred, either expressly or impliedly by the provisions of the Estates Partition Act. This contention therefore fails. The second contention of Mr. Roy relates to the form of the decree passed by the lower Appellate Court. I have already pointed out that sec. 25 provides for a suit for determination of the question of right or title, Secs. 26 and 27 define respectively the effect of the decree in the title suit made while partition proceedings are in progress and made after partition proceedings have been completed. " Elaborate provisions are made which lay down that the decree shall be made in recognition of the partition proceedings and shall be framed in such a manner that the partition proceedings may not be nullified. The distinction between the case in which a decree is made while partition proceedings are in progress and the case in which the decree is made after the partition proceedings have been completed appear to be broadly this, namely, in the former case the successful litigant in the Court may ask for a sub-division in the new Estate into which the lands claimed by him have fallen whereas in the latter case, the successful litigant occupies merely the position of a co-owner with the proprietors of the new Estate within which the disputed lands have been included." [Raghunath Pershad's case 2 C.L.J. 351 at p. 356 (1905)]. As the partition proceedings are now pending in appeal before the Collector, there will be no difficulty in giving effect to the decree made in the civil suit by the sub-division of the new Estate into which the disputed lands have been included. If, however, the partition proceedings are taken to have been completed within the meaning of sec. 27, in view of the fact that the Plaintiffs' interest is the proprietary right over the specified lands in the disputed mouza and held by them in severalty and they are therefore entitled to have assigned to them as their separate Estate the specific lands under sec. 5, cl. (2) of the Act, the decision of the Courts below is to be taken in effect as a direction to the Collector to divide off the lands from the new Estate and to assign them to the Plaintiff as a separate Estate in accordance with the provisions of sec. 28 of the Act. The second contention therefore also fails.

5. The words "and their right to have their names registered with respect to the same share" in the decree of the lower Appellate Court are expunged. Subject to the above modification, the decree of the lower Appellate Court is affirmed. The appeal is dismissed with costs. Hearing fee one gold mohur.

Henderson, J.

I agree.