

(1927) 07 CAL CK 0049
In the Calcutta High Court

Mt. Matangini Ghose and Others

APPELLANT

Vs

Mt. Monmohini Ghose and Others

RESPONDENT

Date of Decision : 05-07-1927

Acts Referred:

Bengal Estates Partition Act, 1876 — Section 149, 149(d)

Citation : AIR 1928 Cal 41

Hon'ble Judges : Page, J;Graham, J

Bench : Full Bench

Judgement

Page, J.—This appeal depends upon the true construction of Section 149, Estates Partition Act (8 of 1876), now Section 119 of Act Section 1897. Section 149 runs as follows:

No order of a revenue officer...(d) made under Part IV, Part V, Part VI, Part VII, Part VIII, (except as provided in the next succeeding section) or Part IX

....

shall be liable to be contested or set aside by a suit in any Court, or in any manner other than as is expressly provided in the Act.

2. The material facts for the purposes of this appeal are few and simple. An application for partition of a parent estate No. 397 in the Dacca Collectorate was preferred under the Act of 1876 by the registered proprietors The partition was duly effected on 25th August 1912, and the appellants as recorded proprietors were put into possession of Sahams No. 15356 and No. 15340 which had been carved out of the parent estate, and had been allotted to them respectively. Many years after the partition proceedings had been completed the respondents filed the present suit No. 260 of 1924, in which they claimed a declaration that they were entitled to an 8 gandas share in kharija taluki right in Mauza Jhougara, part of the parent estate No. 397, and that after partition they were entitled it? kharija taluki right to a 3-annas 15-gandas" share in Saham No 15356 and to-a 3-annas 17-gandas share in Saham No. 15340. They also claimed a decree for

possession of their said shares and incidental relief.

3. The trial Court dismissed the suit upon the ground that it was not maintainable u/s 149, Estates Partition Act, 1876. The lower appellate Court reversed the decree of the trial Court, holding that the suit was maintainable and remitted the case to the trial Court to be heard and determined on the merits. The question that falls for determination is whether or not in the suit as framed an order of a revenue officer within Section 149(d) is liable to be contested or set aside.

4. Now, the scheme of the Estates Partition Act, as I apprehend that enactment is to enable the co-sharers of an estate, each of whom jointly and severally are liable for the revenue to which it is assessed, to obtain a partition of the parent estate into two or more separate estates in such a form that on the one hand, the payment of the revenue secured upon the property should not be jeopardised, and, on the other hand, that the several co-sharers should be liable to pay only that portion of the revenue imposed upon the parent estate as had been charged upon the separate estates which respectively are allotted to them. But, as I read the Act, it was neither intended nor enacted that the revenue officer who carried out the partition, should concern himself with, or affect to decide disputed question of title to the land under partition. That is a function more fittingly performed by a Court of Law the principal duty of the revenue officer in effecting the partition being to provide that the security for the payment of revenue should be safe-guarded. A perusal of the Act discloses that the revenue officer is to have regard to the claims of the recorded proprietors of the estate. It is only a recorded proprietor who is entitled to claim a partition under the Act, and it is the recorded proprietors whose names are to appear in the paper of partition (Section 77.)

5. In my opinion the object of the Legislature in enacting Section 149 was to prohibit any attempt that otherwise might have been made by way of litigation to re-agitate such vexed questions as whether the partition as made, or the proportionate revenue imposed upon any separate estate, was correct or fair ; see Jin this connexion *Ananda Kishore v. Daiji Thakurani* [1909] 36 Cal. 726, *Janaki Nath v. Kali Narain* [191] 37 Cal. 662, *Lakhi Chowdhuri v. Akloo Jha* [1912] 16 C.W.N. 639 , *Anil Kumar Biswas and Others Vs. Rash Mohan Saha and Others*, . Having regard to the elaborate machinery that had been set up for carrying out the partition it is, I think, clear that the Legislature intended that such matters should not be re-opened except as provided in the Act. But, in my opinion, the Legislature by enacting Section 149 did not intend or provide that a person who claimed an interest in the land which was the subject of a partition should be deprived by a Court of Law; although no doubt, in certain circumstances the final decree in the title suit would be subject to the partition that was or would be made, land must be framed

in such manner as to give effect to the partition.

6. See for example Sections 24 to 28 (to which Section 149 is not applicable), Sections 116 and 150. In the present suit the respondents do not seek either to contest or disturb the partition as made, nor do they question in any way the _quota of the revenue payable by any of the separate estates into which the parent estate has been divided. Indeed, if the respondents succeed in establishing their claim to a share in the sahams, the result will be that the ultimate liability of the recorded proprietors to pay revenue will protanto be diminished, while the payment of revenue will be further secured by reason of the added liability of the respondents to pay the revenue due.

7. For these reasons, in my opinion, the claim in the present suit is not barred by Section 149 of the Act of 1876 and the appeal must be dismissed with costs; the hearing fee being two gold mohurs.

Graham, J.

8. I agree.