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**(1910) 04 AHC CK 0029**  
**In the Allahabad High Court**

Muhammad Nasar-ullah Khan

APPELLANT

Vs

Muhammad Ishaq Khan

RESPONDENT

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**Date of Decision :** 05-04-1910

**Acts Referred:**

Uttar Pradesh Land Revenue Act, 1901 — Section 117, 125

**Citation :** 6 Ind. Cas. 833

**Hon'ble Judges :** Tudball, J; Richards, J

**Bench :** Division Bench

**Final Decision :** Disposed Of

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## Judgement

1. The facts out of which this appeal has arisen are shortly as follows: Muhammad Ishaq Khan made an application in the Revenue Court for partition. Objections were tiled by the appellant here, Muhammad Nasar-Ullah Khan. The purport of these objections was that there had already been a private partition between the parties of a great portion of the property, and he contended that this private partition should be paid regard to and that the lands which had been allotted to him by this private partition should be maintained in his possession. These objections were disallowed by the Assistant Collector in charge of the partition by an order of the 15th December, 1906. There was an appeal to the Collector who made an order on the 18th March, 1907. In this order he points out that he has gone carefully into the whole matter. He says that there was a private partition and that he could find no trace of the said private partition, being merely of a temporary nature. He then proceeds to say "I come to the same, conclusion as Babu Mahesh Prasad and accepting the appeal direct that the lots of the private partition be regarded in this case as the severalty of their owners." We may mention that it was quite immaterial whether the arrangement between the parties was temporary or permanent. In making the partition of property it is the duty of a Revenue Court, as far as possible, to allot lands held in severalty to the persons so holding them; and, of course, it follows that any deficiency should be made good out of the common land (vide Sections 117 and 125 of the Land Revenue Act III of 1901). From the order of the Collector an

appeal was preferred to the District Judge who reversed the order of the Collector. The present appeal is taken on the ground that no appeal lay to the District Judge. In our opinion this plea is well-founded. The case of Tulshi Rai v. Gate Ram Rai C.W.N. (1904) 225, is directly in point. The case of Muhammad Jan v. Sadanand Pande 23 A. 394 : C.W.N. (1906) 30 : 3 A.L.J. 43 relied on by the learned District Judge is quite distinguishable. There one of the parties expressly made claim to proprietary title based on adverse possession. We may mention that one of the learned Judges, who decided the case of Tulshi Rai v. Gate Ram Rai C.W.N. (1904) 225 was also a party to the case in Muhammad Jan v. Sadanand Pande 23 A. 394 : C.W.N. (1906) 30 : 3 A.L.J. 43 and no dissent is expressed to the first mentioned ruling. In the present case, in our opinion, there was no question whatever of proprietary title raised between the parties. The only question raised was the question of the effect and nature of the private arrangement which had been come to between the parties; and which, in truth and in fact, related only to the mode of partition. This was a matter entirely for the Revenue Court. We allow the appeal and set aside the decree of the learned District Judge. The appellant will have his costs in all Courts including in this Court fees on the higher scale.