

(1922) 06 PAT CK 0033
In the Patna High Court
Case No : S.A. No. 338 of 1919

Narsingh Thakur and others

APPELLANT

Vs

Bishun Pargash Singh and others

RESPONDENT

Date of Decision : 16-06-1922

Acts Referred:

Citation : (1922) 06 PAT CK 0033

Final Decision : Dismissed

Judgement

Jwala Prasad, J.—This is an appeal against the decision of the District Judge of Muzaffarpur, dated the 6th March, 1919 affirming that of the Munsiff, dated the 5th Sept. 1917.

2. The defendants are the appellants They are part proprietors of an estate called Mauza Bhadai bearing T. No. 8146 in the Collectorate of Mozaffarpur. They instituted proceedings before the Collector for partition of their interest under the Estates Partition Act (V of 1897). The plaintiffs who are also co-proprietors in the said estate objected to the partition by the Collector u/s 7 of the Act which enacts that where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate land to be held in severality as representing his interest in the estate, no partition of the estate shall be made under this Act, except on the joint application of all the proprietors, or in pursuance of a decree or order of a Civil Court. Their objection was disallowed by the Collector on the 3rd February 1913. The order of the Collector was confirmed by the Commissioner on the 5th June.

3. The plaintiffs instituted the present suit out of which this appeal has arisen for a declaration that there was already a separate partition among the proprietors of the estate as required by Section 7 of the Act and hence the partition by the Collector under Act V of 1897 cannot proceed.

4. Both the Courts below have upheld the contention of the plaintiffs and have

held that on account of private partition, among the proprietors of Bhadai, of their respective interests therein, the Collector has no jurisdiction to proceed with the partition under Act V of 1897.

5. Mr. Hassan Imam on behalf of the appellants contends that the finding of the Court below does not amount to a finding of there being a formal and complete private arrangement between the proprietors, as is required by Section 7 of the Act. The Munsiff has recorded the following finding upon this point:-"After an anxious consideration and on weighing the evidence as a whole I, cannot but infer that there has been a bona fide and thorough partition between the Maliks privately and with the consent of all the landlords and that they have been in possession accordingly." However it is conceded that this is a sufficient finding u/s 7 of the Act.

6. The learned District Judge has affirmed the decision of the Munsiff. He has also agreed with the reasons by which the Munsiff arrived at the above conclusion. No doubt he has not used the expressions employed by the Munsiff or those that occur in Section 7, but there can be no manner of doubt from the tenor of his findings throughout the judgment that the learned Judge meant to hold that there was a complete and formal private partition between the proprietors, as contemplated by Section 7 of the Act. He was fully alive to the requirements of that section, which he sets out in the beginning of his judgment for the purpose of determination. He has arrived at the conclusion that these requirements of the Section were satisfied by the gradual process of reasoning. He holds that there was a suggestion of private partition as early as 1847 and although there was no trace of any partition between 1847 and 1869, yet from 1870 up to date there have been a number of documents which mention the three patis and seem to take them for granted from the litigation in the Civil Court regarding the shares of the different proprietors in the year 1866, the learned Judge concludes that their shares were adjusted and that the co-sharer Maliks came to an arrangement and partitioned the village privately. He says that he is confirmed in this belief by a series of transactions dating from 1870 onwards in which the three patties have been recognized, and he holds that although there was no document about the private partition between the proprietors, yet the arrangement to hold their lands separately was formal. To the argument on behalf of the defendants that the arrangement was only for the purpose of convenience in order to enjoy the Ijmal property in the most convenient way, the learned Judge has replied that the evidence on the record shows that there was some partition, and not merely a mutual arrangement.

7. From the rent suits instituted by the proprietors in respect of the 16 annas rent for the land falling into their respective patties and from the entries in the survey record-of rights showing the shares of the proprietors separately, the learned Judge has come to the conclusion that there was a complete private partition among the proprietors. Thus the learned Judge was ultimately confirmed in his belief and came to a definite conclusion about there being a

private partition of the nature contemplated by Section 7 of the Act. The finding of the Court below is therefore not defective in law. I accept the concurrent findings of the Courts below that there was a formal and complete partition among the co-sharers.

8. Although there has been no document regarding the partition nor any direct evidence as to when and how the partition between the proprietors took place, yet the evidence standing over a very long period from 1870 up to date clearly shows that the parties have been holding their lands separately in accordance with their shares in the village. The documents executed by the defendants themselves (Exhibits 5, 8, 7, 9, 11 and 17) clearly use the expression patti taksimba khudha (the Patti partitioned by mutual arrangement). The entries in the survey record-of-rights finally published some 20 years ago show by metes and bounds the lands appertaining to the different patties and the proprietors thereof. These entries were based upon the possession of the parties according to the private arrangements amongst themselves and the parties have all along acquiesced in the separate entries recorded in the survey Khatian and are in possession in accordance with these entries. It was pointed out in the case of Manoo Choudhry v. Munshi Choudhry (1918) 3 P.L.J. 188: 5 P.L.W. 97: 43 I.C. 393 that the parties having acquiesced in the cadastral Survey for such a length of time is a conclusive proof that they had acquiesced in the original partition of the estate among their predecessors-in-interest and that they have been holding their lands in accordance with original partition. In these circumstances similar to the present case it was observed as follows:-

As a point of law we take it that where it is shown that the parties have acquiesced in the result, of a partition, it must be presumed that they or their predecessors-in-interest were parties to the original partition.

9. It was further pointed out in that case that if the parties have been holding their estates in separate shares from time immemorial, the fact that the original partition proceedings were lost in antiquity is not a reason for disturbing divisions which existed for such a long period. In that case, as in the present case, no deed of partition was produced and indeed from lapse of time no direct evidence of partition could be given. Yet very long possession and acquiescence in the separate holding of the lands in the estate were held sufficient to prove that there was a complete partition between the predecessors-in-interest of the present proprietors. I therefore on a careful consideration of the evidence in the case hold that the view taken by the Courts below is correct and that the Collector had no jurisdiction to proceed with the partition under Act V of 1897.

10. It was faintly suggested that the suit having been brought more than 4 months after the order of the Collector made u/s 29 declaring the estate to be under partition was barred by limitation u/s 25 of the Act. This Section has no application to a suit of this nature. The proceedings adopted by the Collector under Act V of 1897 being ultra vires, there can be no bar to the present suit for a declaration that there was such a partition as is contemplated by Section 7 of

the Act and that the Collector be restricted from taking further action to make the partition.

11. The result is that the appeal is dismissed with costs.