

(1922) 02 CAL CK 0018
In the Calcutta High Court

Prosanna Kumar Bedanta Tirtha Bhattacharjya

APPELLANT

Vs

Madhu Badya and Others

RESPONDENT

Date of Decision : 02-02-1922

Acts Referred:

Estates Partition Act, 1897 — Section 99

Citation : AIR 1923 Cal 279 : 68 Ind. Cas. 500

Hon'ble Judges : Panton, J;Newbould, J

Bench : Division Bench

Judgement

1. This is an appeal from the decision of the Subordinate Judge of Faridpur reversing the decision of the Second Munsif of Madaripore. The plaintiff appellant was one of the proprietors of the estate which was partitioned under Act V (B.C.) of 1897. In the share allotted to the plaintiffs there was held by the defendant in permanent tenure treated by some of the plaintiffs co-sharers in the estate. The plaintiff brought the suit to get khas possession of this land by avoiding the tenure. The Court of first instance gave the plaintiff a decree holding that Section 99 of the Partition Act was applicable. That decree has been reversed on appeal by the lower Appellate Court.

2. The only question in this appeal is the applicability of Section 99. We hold that on findings arrived at by the learned Subordinate Judge this section is inapplicable. It is found that "by private partition among all the proprietors the defendant's landlords got the land in suit in their share and that they had no co-sharers when they granted the permanent tenure right to the defendant's ancestors." This finding meets the objection that has been taken, namely, that there was no express finding that the land was held by the co-sharers in severalty when the lease to the defendants was granted. This being a second appeal this finding cannot be attacked on the ground of insufficiency of evidence. But it has been attacked on the ground that there is no evidence on the point. We have examined a copy of the evidence taken and we hold that though the evidence is scanty there is sufficient to enable the learned Subordinate Judge to

draw an inference from which he might come to this finding of fact. It cannot be said that as a point of law there is no evidence to support these findings.

3. It is urged that as the partition by I he Collector was made on the application by some only of the co-proprietors Section 7 of the Act would prevent there having been a partition after there had been a previous division by private arrangement. But the private arrangement described in Section 7 is not necessarily the same private arrangement that would prevent the application of Section 99. From the case law on the subject it would appear that the main test of applicability of Section 99 is holding the land in severalty under a private arrangement. This arrangement need not be so complete or so formally made as to exclude partition on the application of some of the proprietors u/s 7, On the findings arrived at, the facts of the case seem undistinguishable from those of the case of *Nogendra Mohan Ray v. Pyari Mohan Saha* 30 Ind. Cas. 420 : 43 C. 103 : 21 C. L .J. 605 : 20 C. W. N. 339, and we cannot say that the learned Subordinate Judge committed any error in law in the decision at which he has arrived.

4. We accordingly dismiss the appeal with costs.

5. The cross-objection is not pressed. It is accordingly dismissed. We make no order as to costs in the cross-objection.