

(1887) 07 CAL CK 0012
In the Calcutta High Court

Punchanun Mullick

APPELLANT

Vs

Shib Chunder Mullick and Others

RESPONDENT

Date of Decision : 15-07-1887

Acts Referred:

Citation : (1887) ILR (Cal) 835

Hon'ble Judges : Trevelyan, J

Bench : Single Bench

Judgement

Trevelyan, J.—This is a suit for partition, but the real question is one of jurisdiction. Mr. Pugh contended on the first issue that I had no jurisdiction.

2. The suit is brought apparently for partition of all the Immovable property formerly belonging to Gour Kissore, but the intention of the plaintiff is really to seek partition of the family dwelling house. It has been contended by the plaintiff that if a person sues for partition of a portion of a property held jointly between him and the defendant that suit must be dismissed. Authorities have been cited for this proposition, and there are some on the opposite side.

3. The key to this proposition, however, is to be found in the case of Button Monee Dutt v. Brojo Mohun Dutt 22 W.R. 333 where the plaintiff brought a suit in reality to enable him to separate from the joint estate a small portion which he desired to occupy for his own convenience. This suit was dismissed as being not maintainable, but it was contended on his behalf that, if the claim was not allowable, still he might have a declaration as to the extent of his share. Jackson, J., there says: "If the plaintiff sought a declaration like that, he ought to have framed his suit properly for that purpose; he is not entitled, regard being had to the mode in which he framed his suit and the valuation he put upon it, when the main object of the suit failed, to turn round and ask for that declaration." The reason for the dismissal being that in the mofussil there is an ad valorem fee for such suits, and if the relief given should be greater than that covered by the plaint, the Government would be a loser in fees.

4. There is no doubt of this proposition, that if a man sues for partition of joint property and the defendant alleges that there is other property, the plaintiff is bound to submit to partition of all the properties; and if he sued in the mofussil, he would either have to amend his plaint accordingly, and pay the extra stamp duty, or have his suit dismissed. But there is no ad valorem fee in this Court, and as I understand the law, in the absence of authority, if the defendant claims that there is other property to be partitioned, and it turns out that there is other property, that is no reason for the dismissal of the suit. It is a reason for including the other property in the suit if the Court has jurisdiction to deal with such property. Then it appears that one of the properties sought to be partitioned is outside the jurisdiction, and no leave has been granted under the Charter to sue in respect of that property, and it is said that for this reason I must dismiss the suit. The case of *Padmamani Dasi v. Jagadamba Dasi* 6 B.L.R. 134 decided by Phear, J., is, I think, an authority as to this point, but if it is not, I should have no difficulty in deciding the case. In *Carrison v. Bodrigues* 13 C. 115 I held that where a person sues in ejectment for properties under the same title, one of such properties being outside the jurisdiction, I can deal with the property within the jurisdiction. There is no authority shown contrary to this view, and the principle is, I think, practically the same in this case. The suit is one for partition of land, and I can deal with so much of the land as is within the jurisdiction. I think, therefore, that I have jurisdiction to deal with this suit. The plaintiff submits to partition of the property within the jurisdiction, and that is admittedly joint. There will be a decree for partition of those properties.