
(1922) 11 PAT CK 0019
In the Patna High Court

Radhakanto Parhi

APPELLANT

Vs

Mathura Mohan Parhi

RESPONDENT

Date of Decision : 22-11-1922

Acts Referred:

Estates Partition Act, 1897 — Section 119, 25, 5(3)

Citation : AIR 1924 Patna 187

Hon'ble Judges : Ross, J;Mullick, J

Bench : Full Bench

Judgement

1. Facts--The original proprietor, Chakradhar left four sons named Bishnu Mohum, Shyama Charan Purusottam and Hrusikesh. The plaintiffs who were three in number, belonged to the branch of Bishnu Mohum and the first seven defendants belonged to the branch of Shyama Charan. The original applicants for partition in the Collector's Court were three who jointly owned an 8 pies interest in the mahal, but after the service of the necessary notices, thirty seven other persons who had acquired title by purchases from the original proprietor were joined. On the 12th of January 1914 the proceeding was instituted in respect of seventy-four mauzas. The Deputy Collector Mr. Bose on 28-10-1916 made a general arrangement allotting mauzas or part of mauza to the various parties. The present plaintiffs were in possession by purchase, at the time of application for partition, of a 2-annas 7-pies share in the entire mahal; and a 5- annas 4-pies share in twenty mauzas; and the Deputy Collector allotted to them a portion of mauza Mandari and either the whole or part of seventeen other mauzas and estimated their assets at Rs. 10,787-10-4. On this various claimants filed objections and the successor of Mr. Bose made an allotment approving of the general allotment of his predecessor. On 4-12-1917 owing to objections of the claimants the matter was placed before the Collector and he disagreed with the mode in which the partition was being made and ordered the Deputy Collector to proceed under Sub-clause (4) and not under Sub-clause (1) of Section 5. Thereupon he made an allotment assigning to the plaintiffs 3 other mauzas in their entirety and a portion of Mandari, which were four of the twenty mauzas in

which the plaintiffs had acquired a 5-anna 4, pies interest as mentioned above. He assigned out of the fifty-four remaining mauzas of the estate to the plaintiffs the whole of fifteen mauzas and part of two.

2. The Collector again disagreed with this allotment and he restored Mr. Bros's arrangement, allotted the entire mauza Mandari with the exception of a strip in the north to the plaintiffs, and disallowed the allotment made in favour of the plaintiffs. The Commissioner confirmed this last order of the Collector's finally. It was also confirmed by the Board of Revenue notwithstanding an appeal preferred by the plaintiffs.

3. Having failed before the Board of Revenue the plaintiffs instituted a suit for a declaration that the partition made by the Revenue authorities is irregular and illegal and ultra vires; and that the plaintiffs are entitled to get assets to the extent of 8 annas interest in the 20 specific villages mentioned in Schedule A annexed to the plaint and to the extent of 2 annas 8-pies share in the remaining mauzas of the mahal.

4. The Subordinate Judge who tried the suit held that if there had been any disobedience of the statutory provisions of the Bengal Estate's Partition Act on the part of the Revenue authorities, that disobedience was at most an irregularity and that a suit in the Civil Court for a declaration that the partition was held without jurisdiction could not be maintained. Accordingly he dismissed the suit and the plaintiffs prefer the present appeal to the High Court.

Mullick, J.

(after stating facts his Lordship proceeded):

It is contended by the learned Counsel for the appellants that as a result of the plaintiffs purchase of the 5-annas 4-pies share in the twenty mauzas they, at the time of the partition, became possessed of an 8-anna share in twenty mauzas, and of a 2-annas 8-pies share in the remaining fifty-four mauzas, and that under the provisions of Sub-clause (3) of Section 5 they were entitled in one or more of the twenty mauzas to an allotment of which the assests shall be proportionate to their total interest in the entire twenty mauzas.

5. The learned Counsel also applies the same principle to the 2-annas 8-pies interest of the plaintiffs in the remaining fifty-four mauzas.

6. In my opinion this contention is unsustainable. Sub-clause (3) of Section 5 applies only to cases where a proprietor has an undivided share held in common tenancy in specific mauzas forming part of the parent estate but where he has no interest which extends over the whole estate; in other words, it applies only to proprietors who have an interest in some out of the total number of villages constituting the estate. If he has a hare in the remainder also, then it follows that he has a fractional interest in the entire estate as well as a fractional interest in a part, the latter fractional interest being the difference between the larger and the smaller interest; that is to say, if, as in this case, he has a half-

share in twenty mauzas and a one-sixth share in fifty-four mauzas, it must be held that he has a one-sixth share in the entire estate and in the twenty mauzas a fractional interest represented by the difference between one-half and one-sixth. That is the view taken by the Deputy Collector, who passed the order, devoted the 28th August, 1917. Although the Collector appears from his order, dated the 4th of December, 1917, to have been of the erroneous opinion that the case fell within Sub-clause (4) of Section 5, in the result his final order of the 4th September, 1918, was correct. The plaintiffs in fact are proprietors coming within Sub-clause (1) and Sub-clause (3) of Section 5 and, therefore, under Sub-clause (5), the Deputy Collector was entitled to make the allotment as far as possible in accordance with the principles contained in the first two of these sub-clauses. In this case it has been found impracticable to give to the plaintiffs in mauza Mandari or in any other mauza within the twenty mauzas, an interest which will compensate the plaintiffs for their entire interest in the twenty mauzas. So the Deputy Collector has assigned to the plaintiffs an interest in mauza Mandari only to the extent of Rs. 5234-12-11 and has allotted lands in mauzas other than the twenty mauzas to compensate for the balance of the plaintiffs' assets in the twenty mauzas which amounts to Rs. 1271-5-0.

7. And even if it be held that the case is one falling exclusively within Sub-clause (3) then under the proviso to that sub-clause, the Deputy Collector was entitled to give the plaintiffs their 8-annas share in the twenty mauzas and their 2-annas 8-pies share in the remaining mauzas, in any one or more mauzas of either group. AB I read this sub-clause a proprietor of a mahal which is composed of two mauzas and who is in possession of a fractional interest in each is not entitled to claim an allotment in each mauza representing his assets in that mauza; such a construction would defeat the entire principle of compactness where there are many village and when the proprietor holds different fractional interest in each.

8. It is next contended on behalf of the appellants that the allotment contravenes Sub-clause (3) because the plaintiffs have not obtained in mauza Mandari, which is the only mauza appertaining to the group of twenty mauzas which has been allotted to them, an interest equal to their interest in the entire group. Now although the assets of their half-share in the twenty mauzas are Rs. 6,506-1-11 the assets of their 5-annas 4-pies share amount only to Rs. 4,400, and as this is a case falling under Sub-clause (5) and as lands of which the assets are Rs. 5234-12-11 have been allotted to them in Mandari, there has been a strict compliance with the terms of the statute. He is only entitled to land within the twenty mauzas of which the assets are Rs. 4,400 and that claim has been more than satisfied.

9. On the merits, therefore, it seems clear that the Deputy Collector has not only acted with jurisdiction,, but that he has fully complied with the law, and, therefore, the general question as to the jurisdiction of the Civil Court to set aside Revenue partitions does not really arise in this case.

10. The second point that was made by the learned Counsel for the appellant was that there had been a failure to comply with the provisions of Section 30 of the Act inasmuch as the claimants in groups A, B, K had been allowed at a late stage of the proceedings to claim one joint block. It appears that in the preliminary stages they had each applied for a separate block in the Court of the Deputy Collector: but that after the general arrangement had been made, they changed their minds and wished to have one compact block in joint tenancy. There is no provision of law forbidding such a request. The Deputy Collector granted it and the terms of Section 4(2) of the Act clearly show that it is open to one or more co-sharers to ask that their interest shall be formed into one separate estate to be held as a joint undivided estate. There is no limitation as regards the state at which such an application can be made; and in my opinion there was no irregularity in the Deputy Collector's having entertained the application even after he had made the general arrangement and had given each of those co-shares a separate block.

11. Finally the question of jurisdiction has been argued before us at some length and although it does not arise in the view I take, I will deal, with it shortly. Jurisdiction, I think in reference to the matter before us, must mean the power or authority to judge and a Court is said to exercise jurisdiction when it exercises its power to adjust any rural relationship between the parties before it. The exercise of jurisdiction with which we can here interfere must relate to the subject-matter, pecuniary value, locality or the parties; these are the matters which form the foundation of a Court's jurisdiction, and if a Court wrongly assumes that the foundation exists when in fact it does not exist then and then only it is wrongly exercising jurisdiction. But jurisdiction in its wider sense is sometimes understood to mean the power to do certain specious things which are ordained by statute; it is in the narrower sense that we must understand the word here. If the Court has assumed jurisdiction correctly, that is to say, if by reason of its local situation or pecuniary authority, or by reason of the subject-matter, or the position of the parties the Revenue Court had power under the statute to entertain the partition proceeding, then, in my opinion, every error made in carrying out the partition in accordance with the terms of the law would not necessarily invalidate the proceeding and render it null and void. As has been often observed a Court has jurisdiction to decide wrongly as well as rightly and if the Deputy Collector has, in making the partition, disobeyed the provisions of Sub-clause (3) of Section 5 of the Estates Partition Act and instead of making an allotment under that sub Clause he has proceeded under Sub-clause (5) then that error cannot be remedied in a Civil Court. Section 119 of the Estates Partition Act would, in my opinion, be a clear bar. Where the foundation of jurisdiction does not exist as in cases where a Revenue sale is held though there is no arrear of revenue at all, or a certificate sale is held in execution of a certificate issued with suit authority, a Civil Court has an undoubted right to declare the sale to be a nullity and to restore the property to the owner. So again where a property such as a burial ground, which the Estates Partition Act forbids

the Deputy Collector to partition, is partitioned, I think a suit Will lie to declare that the partition so far as the burial ground is concerned is null and void; but if the Deputy Collector merely co-limits an error of law, it would be contrary to principle to hold that a Civil Court can interfere for the purposes of readjusting the arrangement and making a fresh partition.

12. But, then, the learned Counsel for the appellants contends that in the case before us a question of title or interest in the parent estate is involved and therefore the appellants are entitled, on the authority of *Kalanand Singh v. Kamlanand Singh* 14 Ind.Cas. 225 and *Raghunath Prasad Narayan Singh v. Khajeh Muhammai Gawhar Ali* [1905] 2 C.L.J. 351 to obtain a declaration that they have an 8-annas share in the twenty mauzas. In my opinion these decisions have no bearing on the present case. What was decided in these cases was that it was open to a party to sue for a declaration to, and possession of a property if his interest or title to such property had been affected by the Deputy Collector's proceeding. Section 25 to 27 of the Estates Partition Act expressly recognize the jurisdiction of a Civil Court to make decrees in these matters, and there can be no question that Section 119 would not bar a suit for declaration of title or of the extent of interest claimed by a recorded proprietor if aggrieved by an order made by the Deputy Collector u/s 23. In the present case there is no denial whatsoever that the plaintiffs are entitled to an 8-anna interest in the twenty mauzas and obviously no declaration in this respect need be given. The sole question is whether it is open to the plaintiffs to get a declaration that the proceeding of the Deputy Collector was null and void by reason of his having misconstrued the provisions of Section 5 of the Act. In my opinion such a suit would not lie and the learned Subordinate Judge was right in dismissing it.

13. The result is that the appeal is dismissed with costs to the contesting respondents only.

Ross, J.

14. I agree that the appeal should be dismissed; and, for the reasons given by the learned brother, I hold that the partition conformed to the requirements of Section 5 of the Act.