

(1926) 06 AHC CK 0052
In the Allahabad High Court

Raja Rai and Others

APPELLANT

Vs

Ram Autar Rai and Another and Timal and Others

RESPONDENT

Date of Decision : 01-06-1926

Acts Referred:

Citation : 96 Ind. Cas. 783

Hon'ble Judges : Sulaiman, J; Mukerji, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sulaiman, J.—This is a defendants' appeal arising out of a suit for exclusive possession of a 1/3rd share in certain villages, the list of specific plots being given in the plaint. In the alternative the plaintiffs claimed a decree for joint possession. There was a further relief for mesne profits. The whole plaint was based on the supposition that the plaintiffs were entitled to a 1/3rd share in certain properties which had under a private partition been divided, the plaintiffs being put in exclusive possession of their separate share. It was on this basis that mesne profits were claimed. The Court below has found that the allegation as to the private partition is untrue and the claim for exclusive possession has been dismissed. There is no cross-objection by the plaintiffs and it must, therefore, be taken as final that there has been no private partition at all. On a previous occasion the plaintiffs obtained a decree for redemption of the property in suit from the Civil Court and both parties rely on that decree. The plaintiffs allege that on the basis of that decree they, under a compromise, obtained mutation of names through the Revenue Court and that their names stand recorded in the revenue papers. They based their claim on the order of the Revenue Court operating as estoppel between the parties. In our opinion, when the plaintiffs' allegation that there was a private partition failed this suit ought to have been dismissed, the plaintiffs' remedy being to apply to the Revenue Court for actual partition of the revenue paying property. It is useless to grant to the plaintiffs a mere declaratory decree because they have already obtained a Civil

Court decree for redemption under which a formal delivery of possession has been made. The plaintiffs' reliance on the order of the Revenue Court passed in appeal under which their names were recorded as against certain specific plots does not carry any weight. In the first place, it is not shown whether the consent was given by all the parties to the present suit, nor is it shown how many of the 30 defendants were actually represented in the Appellate Court. Furthermore, that consent merely referred to the way in which the mutation of names was to be effected and there was no mention that the titles of the parties would be finally decided by that order. As observed by their Lordships of the Privy Council in the case of *Chokhey Singh v. Jote Singh* 1 Ind. Cas. 166 : 31 A. 73 : 11 Bom. L.R. 69 : 13 C.W.N. 274 : 6 A.L.J. 100 : 9 C.L.J. 151 : 5 M.L.T. 167 : 19 M.L.J. 123 : 36 I.A. 38 : 12 O.C. 288 such an order passed by a mutation Court cannot be deemed to be the mutual arrangement under which the title to "property was finally settled by the parties.

2. The proper remedy of the plaintiffs is to apply to the Revenue Court for actual partition and it is in that way only that they can obtain separate possession over specific plots.

3. When the case for exclusive possession on the basis of a private partition has broken down the plaintiffs' claim for mesne profits also cannot succeed. They should have claimed profits in the Revenue Court as joint owners. I would, therefore, allow the appeal and dismiss the suit.

Mukerji, J.

4. I agree that the appeal must be allowed and the suit of the respondents Nos. 1 and 2 should be dismissed.

5. The respondents Nos. 1 and 2 brought a suit for redemption, of a certain share. That suit succeeded and although in that suit the plaintiffs claimed possession of specific plots of land the Court did not accede to their prayer. By the present suit the plaintiffs sought to get what they failed to, get by the redemption suit. They alleged a private partition and the allegation was found to be untrue. In the circumstances the suit must fail.

6. We allow the appeal and set aside the decree of the Court below with costs including Counsel's fees in this Court on the higher scale.