

(1927) 05 PAT CK 0032

In the Patna High Court

Rajkeshwar Singh and Others

APPELLANT

Vs

Shyam Bihari Singh and Others

RESPONDENT

Date of Decision : 11-05-1927

Acts Referred:

Estates Partition Act, 1897 — Section 29, 5(4)

Citation : AIR 1927 Patna 286

Hon'ble Judges : Das, J;Allanson, J

Bench : Full Bench

Judgement

Das, J.—Some time in 1918 Defendant No. 1, who is one of the appellants in this Court, presented an application before the Collector of Shahabad for partition of the mahal Bhadwar, T. No. 1291. The application was objected to by the plaintiffs, the respondents in this Court, on the ground that the lands of the estate had, been divided by private arrangement, formally made and agreed to by all the proprietors, and that each of the proprietors had, in pursuance of each arrangement, taken possession of separate lands to be held in severalty. The learned Collector dealt with the matter on the 11th June 1920. He pointed out that, on the admission of the objectors, there was some common land and, that the objection was not therefore maintainable, and that the partition should proceed u/s 5, Clause 4, Estates Partition Act. On the 17th Junw.1920, he recorded a proceeding u/s 29 of the Act declaring the entire mahal to be under partition. Aggrieved by this order the plaintiffs appealed to the Commissioner of the Patna Division. The learned Commissioner on the 13th August 1920, passed his order in the matter. He said that the Collector did not imply that any new partition of the already partitioned estate should be made, and he directed that the partition should proceed u/s 5, Clause (4), Estates Partition Act. Against that order, the Defendant No. 1 appealed to the Board of Revenue. The Board of Revenue, by its Resolution, dated" the 20th December 1920, set aside the order of the Commissioner and directed that the proceedings of the Collector u/s 29 of the Act should be read in supersession of his previous order prescribing the application of Clause (4), Section 5. The result of the resolution of the Board of

Revenue is that the partition of the mahal has been directed to be held. On the 19th February 1921 the suit out of which this present appeal arises) was instituted by Shyam Bihari and others, who were the objectors before the learned Collector for the following relief:

That, on the adjudication and decision of the said points, it may be declared by the Court that the mahal Bhidwar, T. No. 1291, has been privately partitioned, and the plaintiff's parties are separate under the said private partition, and that the defendants have no power or right to have it partitioned against the said private partition.

2. It will be noticed that the plaintiffs did not ask for any relief prohibiting the defendants to the action from proceeding with the partition before the Board of Revenue. No interim injunction was sought for or granted and the result is, as we are informed, that the estate has already been partitioned and that all that remains to be done is to obtain the approval of the Commissioner to give it final completion.

3. In these circumstances, the question arises whether the learned Judge should have granted the declaration sought, to the plaintiffs. Section 42, Specific Relief Act, is the relevant section to consider in this connexion. That section provides that any person entitled to any legal character, or to any right as to any property, may institute a suit against a person denying, or interested to deny, his title to such character or right, and the Court may, in its discretion, make therein a declaration that he is so entitled, and that the plaintiff need not in such suit ask for any further relief. The rest of the section need not be quoted. It is well settled that a Court will not make a declaration of an abstract right exclusive of practical utility especially when that declaration may not be productive of any benefit to the party obtaining the declaration.

4. Now the decree which has been given by the learned Subordinate Judge to the plaintiffs leaves it open to the defendant to go to the revenue Court and ask that Court to carry the resolution of the Board of Revenue into effect. No doubt, if the civil Court had granted an injunction as against the defendants restraining them from proceeding with the partition in the revenue Court, it would be impossible for the defendants to make any application to the revenue Court; for such an application would bring them under the jurisdiction of the civil Court which would have the power to commit them for contempt of Court. But in this case no injunction was sought for and none was granted, and there is therefore no prohibition upon the defendants from going to the revenue Court and asking that Court to partition the estate in accordance with the Resolution of the Board of Revenue. The revenue Court is in no sense a subordinate Court to the civil Court. It is not bound to regard the order passed by the civil Court in this case as binding upon it. This being the position it seems to us that the learned Subordinate Judge should not have exercised his discretion in favour of granting the declaration sought for.

5. I ought to point out that the civil Court should be very slow to interfere with the jurisdiction which is exercised by the revenue Court under powers conferred upon it by the Estates Partition Act. It has been pointed out that, where Parliament has constituted a tribunal for of special purpose, the Court cannot restrain persons who are entitled to do so friar applying to it. No equity can be founded on the allegation that a Court, legally constituted, is not properly competent to decide questions within its jurisdiction; and in this Case, when all the facts are taken into consideration, it will be found that there is absolutely no equity in favour of the plaintiffs. When the application for partition was presented by the appellant; before the Collector, the plaintiffs submitted to the jurisdiction of the revenue Court and asked that Court to determine the question raised by them, namely whether there had been a previous partition between the parties. By the latter order which the learned Collector passed to which I have already referred, the learned Collector seems to have held that the entire estate should be partitioned.

6. The present plaintiffs, dissatisfied with that order, acted strictly within the provisions of the Estates Partition Act and carried an appeal to the learned Commissioner. The learned Commissioner decided in their favour. Thereupon the other side carried an appeal to the Board of Revenue. The plaintiff took the chance of succeeding in the revenue Court. Having done that it seems to me inequitable that they should be allowed to. come to the civil Court and to ask the civil Court to make a declaration of title in their favour.

7. As I have already said, costs have been incurred by the defendants in connexion with the partition, and the partition has been completed and awaits only the final signature of the Commissioner. In these circumstances, the learned Subordinate Judge should not have made any declaration in favour of the plaintiffs and I would allow this appeal, set aside the decree passed by the Court below and dismiss the plaintiffs' suit with costs in both the Courts.

Allanson, J.

I agree.