

(1930) 03 CAL CK 0009
In the Calcutta High Court

Roy Kiran Chandra Roy and Another

APPELLANT

Vs

Rama Nath Dutta Chowdhury and Another

RESPONDENT

Date of Decision : 18-03-1930

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 54

Citation : AIR 1931 Cal 104

Hon'ble Judges : Rankin, C.J;C.C. Ghose, J

Bench : Full Bench

Judgement

Rankin, C.J.—In this case, the plaintiff is a tenure-holder under a revenue paying estate bearing No. 3841. He is not a tenure-holder of the whole of the land of the estate but he is a tenure-holder of an eight annas interest in a certain mouza which is owned jointly between estate No. 3841 and estate No. 3845 the land of this mouza being ijmalī between the two estates and each of these estates having an interest of eight annas. The position, which the plaintiffs is in, according to the argument of Mr. Nasim Ali is that, if he wants partition, he is bound to go for it to the civil Court because he cannot ask for the partition of estate No. 3841 and he cannot possibly go under the Estates Partition Act before the Collector, he being only a tenure-holder. It is contended on the other hand, by Mr. Sen for defendants 1 and 2 who are the purchasers at a revenue sale of 1906 of estate No. 3845 and have thus become proprietors of eight annas interest in this mouza, that it is not competent to the civil Court to direct a partition in this case, that Government revenue would be affected and that partition by the Collector would be the only course. Mr. Sen has referred us, in particular, to an unreported decision of Richardson, J., in appeal from Appellate Decree No. 2199 of 1919 *Sashinath Dutt v. Aswani Kumar Dutt* Appeal from Appellate Decree No. 2199 of 1919 (Unreported) which appears to have been a case where some sixteen different taluqs had their lands all intermixed and some cosharers in one of the taluqs desired to have a partition. In that case, Richardson, J., was of the opinion that partition by the civil Court would be an interference with the assets upon which the Government revenue was secured.

Mr. Sen has pointed out also that, as Richardson, J., stated, as may be seen from the case of Asman Singh v. Tulsi Singh [1917] 2 Pat. L. J. 221 the decision of the Full Bench of this Court in the case of Jagadishury Debya v. Kailash Chandra Lahiry [1897] 24 Cal. 725 has not generally been followed in other Courts. I had occasion to make recently certain observations about this case which I will not here repeat; but it appears to me, when we examine the case before us, that the one question which we need ask ourselves is whether or not the case is with-in the meaning of Section 54, Civil P.C. Assuming for the moment that it is not open to us to interpolate into this section* any requirement to the effect that it is necessary that the plaintiff should ask for a division of the Government revenue in order that the case may come within the section, still what the section deals with is a case where there is a decree for the partition of an undivided estate or for the separate possession of a share of such an estate. The plaintiff here is not asking for a division or for a partition of estate No. 3841 in which he alone has any sort of interest. He is a mere tenure-holder and could not go before the Collector under the Estates Partition Act. If he were a tenure-holder having a right to ask for partition of the whole of the estate No. 3841, he would, in my judgment, come within the language of Section 54, Civil P.C. That however is not the position. He is merely asking for partition of a particular mouza and he is a tenure-holder only in respect of an eight annas interest in the land of that particular mouza. In these circumstances, it does not seem to me that it is possible to contend either that the plaintiff has no right of action at all or that, if he has a right of action, the decree must be such as is contemplated by Section 54, Civil P.C., I think therefore that this appeal fails and must be dismissed with costs.

C.C. Ghose, J.

2. I agree.