(1950) 01 GAU CK 0009

In the Gauhati High Court

Case No : R.A. No. 82 of 1949

Saona Mura APPELLANT

Vs

Charthey Teron RESPONDENT

Date of Decision : 20-01-1950

Acts Referred:
Assam Land and Revenue Regulation, 1886 — Section 147

Citation : AIR 1951 Guw 41

Hon'ble Judges : T.V. Thadani, C.J

Bench : Single Bench

Advocate : S.K. Goswami, for the Appellant; P.K. Lahiri, for the Respondent

Judgement

Thadani, C.J.—This is an appeal u/s 147(b) , Assam Land and Revenue Regulation directed against are order of the learned Deputy Commissioner, Nowgong, dated 11-11-48, by which he cancelled a periodic patta which had been Issued to the appellant and ordered a fresh periodic patta for the entire area to be issued in favour of the respondent.

2. It appears that in the first instance this patta was originally granted to the father of the appellant, who committed a default in the payment of the arrears of land revenue, resulting: in the cancellation of his patta. After the appellant''s father''s patta had been cancelled, it was re-settled upon the respondent. Somehow or other the appellant prevailed upon the respondent to share the land covered by the periodic Patta with him. Shortly afterwards there was an amicable partition between the appellant and the respondent, a partition which was apparently recognised by the revenue authorities. In pursuance of this partition the revenue authorities-issued two separate periodic pattas one in favour of the appellant and the other in favour of the respondent. Against the grant of the two separate periodic pattas, an appeal was preferred by the respondent to the Deputy Commissioner, Nowgong, and it is against the order passed by the learned D.C., Nowgong, that the appellant has preferred this appeal.

3. Mr. Lahiri for the respondent has frankly stated that there is no section in the Assam Land and Revenue Regulation which empowers a Deputy Commissioner to cancel periodic patta once granted to a person; there is only provision for the annulment of a periodic patta which takes place upon non-payment of land revenue if there is no default in the payment of land revenue, the patta cannot be cancelled.

4. In this case, It is not disputed that there was no default is the payment of land revenue.

5. It may be true, as the learned D.C. appears to think, that the amicable partition which influenced the revenue authorities in granting two separate periodic pattas to the appellant and the respondent respectively, may have been brought about by the machinations of the S.K. There may or may not have been fraud. Assuming there was fraud, nevertheless the revenue authorities under the Regulation had no power to cancel a periodic patta They must refer the party aggrieved by an alleged fraud to the Civil Court for settlement of the respective rights of the parties.

6. I accept the concession made by Mr. Lahiri--which I think has been properly made and set aside the order of the Deputy Commissioner canceling the periodic patta of the appellant.

7. The result is that the periodic patta Issued to the appellant will stand and the patta issued to the respondent will also stand.

