

(1897) 05 CAL CK 0015
In the Calcutta High Court

Sarat Chandra Purkayestha	Vs	APPELLANT
Prokash Chundra Das Chowdhury and Others		RESPONDENT

Date of Decision : 05-05-1897

Acts Referred:

Citation : (1897) ILR (Cal) 751

Hon'ble Judges : Macpherson, J;Ameer Ali, J

Bench : Division Bench

Judgement

Macpherson and Ameer Ali, JJ.—The suits which have given rise to this and the two analogous appeals Nos. 108 and 186 of 1895, have been dismissed on the statements contained in the plaints, and without going into any evidence, on the ground that u/s 154, Clause (e) of the Assam Land and Revenue Regulation (I of 1886) the Civil Court had no jurisdiction to entertain them, and also because certain ijmalis and jalkars had been excluded. It is sufficient to deal with appeal No. 279 (suit No. 280 of 1892), which has alone been argued, as it is admitted that the decision in this will govern the decision in the other cases.

2. In suit No. 280 the plaintiffs ask for the partition of about 170 plots of land situated in one or other of the eleven mouzahs mentioned in the first 11 schedules to the plaint and appertaining to one or other of six revenue-paying estates, which may be described as No. 1, 7, 11, 22, 23 and 26. The plaintiffs and the three defendants are the owners, and, so far as appears, the sole owners, of these estates, the plaintiff's share being 6 annas and that of the defendants 10 annas; of the 170 plots, 57 appertain to taluk No. 1, 42 to taluk No. 7, 23 to taluk No. 11, 13 to taluk No. 22, 14 to taluk No. 23 and 11 to taluk No. 26. Schedules 12, 13, 14 refer to certain specified plots appertaining to some of the taluks which are excluded from the partition as being either debutter or brahmutter, or as being held ijmalis with certain other persons not parties to the suit, but how or in what capacity is not stated. In order to understand clearly the position we may refer shortly to the plaints in the two other suits, Nos. 131 and 132. The land is situated in the same mouzas, and the parties are the same as in

suit No. 280, with the addition of certain defendants interested in other taluks, some of the land of which it is sought to partition. In both suits certain specified plots are also excluded from the partition asked for.

3. Suit No. 131 is for the partition of about 59 plots appertaining to one or other of taluks Nos. 8, 11, and 1; of these 56 appertain to taluk No. 8 in which all the defendants, including the parties to suit No. 280, have a share, and three are common to that taluk and taluks Nos. 11 or 1, some of the lands in which it is sought to partition in suit No. 280, and which belong to the parties to that suit. Suit No. 132 is for the partition of about 50 plots of lands appertaining to one or other of 10 taluks. About 35 of these appertain to taluk No 2 owned by all the parties to the suit. The rest are common to some of the taluks, amongst which are taluks Nos. 1, 7, 22, 23 and 26 belonging to the parties in suit No. 280, and some of the lands on which it is sought to partition in that suit, and taluks Nos. 6, 9, 12 and 28, which are said to belong to two only of the defendants in suit No. 132.

4. It will thus be seen that some plots of taluks Nos. 1, 7, 11, 22, 23, and 26 appertaining jointly to those and other taluks are excluded from suit No. 280 and brought into the other suits. Section 154 of the Assam Regulation debars the Civil Court from exercising jurisdiction in any of the following matters: (d) claims of persons to perfect partition; (e) claims of persons to imperfect partition (with a certain exception which does not apply here); (f) the distribution of the land or allotment of the revenue on partition. By Section 96 partition is described as either perfect or imperfect; "perfect partition" meaning the division of a revenue-paying estate into two or more such estates, each separately liable for the revenue assessed thereon; "imperfect partition" meaning the division of a revenue-paying estate into two or more portions jointly liable for the revenue assessed on the entire estate. Section 97 provides that no person shall be entitled to apply for imperfect partition of an estate, unless with the consent of recorded co-sharers holding in the aggregate more than one-half of the estate, or for a perfect partition if the result of the partition would be to form a separate estate liable for an annual amount of revenue less than five rupees. If, however, a partition is refused on the latter ground the Civil Court can, under clause (e) of Section 154, entertain a claim for imperfect partition. That event has not happened.

5. This is not a case of perfect partition, as no division of the revenue is asked for, and it is contended for the appellants, the plaintiffs in the suits, that the jurisdiction of the Civil Court is not taken away by Section 154, because the imperfect partition contemplated and provided for by the Regulation is the division of the entire estate into two or more portions, whereas what the appellants want is a division of a portion only of the estate, or more accurately speaking of portions of several estates.

6. This possibly may be under certain circumstances a correct contention. If the appellants and the defendants were the owners, and in possession of a specific

portion of an entire estate, having no interest in the remaining portion beyond the general liability for the whole Government revenue, it may be that the Court could, notwithstanding the Regulation, make a partition of the particular portion which belonged to them. That, however, is not the case here, and we express no opinion on the point. So far as appears from the plaint the appellants and the defendants are the sole owners of the whole of the six taluks and not of any particular portions of them, and they want to get the lands of those taluks divided in the way most convenient to them. They exclude certain plots as appertaining jointly to those and other taluks. They also exclude some plots of brahmutter or debutter, and other plots as joint with lands of other persons, but how or in what right those persons hold, or how the lands are joint, is not stated.

7. It is quite clear that the appellants by lumping together the lands of a number of taluks cannot give the Court a jurisdiction which it could not exercise in respect of any one of them, nor can they give it jurisdiction by excluding plots of land which properly appertain to them. Putting the narrowest construction on the Regulation, the Civil Courts are debarred from entertaining any claim for the division of an entire revenue-paying estate into two or more portions or from making any distribution of the land of such an estate. An estate does not cease to be an entire estate because a few plots of land are common to it and some other estate, or because they are brahmutter or debutter, or because they are held in some undefined way ijmalī with other persons. The plaint must show that the Court has jurisdiction to deal with the subject-matter of the suit. The plaints in these suits so far from showing this indicate the contrary, and the suits have, we think, been rightly dismissed.

8. Obviously also there might be considerable difficulty in making the partitions, and considerable complication in future if they were made, for the lands, however divided, would continue to be attached to the taluks to which they are now attached. It is unnecessary, however, to enlarge on this. We dismiss the appeals with costs.