

(1917) 08 CAL CK 0023
In the Calcutta High Court

Sheik Roshan and Sheik Jamaldi and Others	APPELLANT
Vs	
Sheik Atabali and Others	RESPONDENT

Date of Decision : 16-08-1917

Acts Referred:

Citation : 43 Ind. Cas. 341

Hon'ble Judges : N.R. Chatterjea, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—These two appeals are preferred by the plaintiffs against a decision of the learned Subordinate Judge of Dacca, dated the 3rd August 1915, reversing the decision of the Munsif at Naraingunj. The suits were brought by the plaintiffs for partition. The plaintiffs originally brought two suits against the defendants Nos. 7 and 8 for possession. In these suits, they succeeded. But, on attempting to enforce the decrees of the Court, they were resisted and fresh suits had to be instituted against the defendants Nos. 1 to 6. In them, the plaintiffs succeeded with respect to a 14-anna share and they were put in joint possession with the 14-anna co-sharer defendants. The plaintiffs have also taken a settlement of another one-anna share. So, they are entitled to a 15-anna share of the property. The right they have got is that of an Occupancy raiyat. The defendants have got a settlement of one-anna from another co-sharer landlord of the interest of a mirashdar, that is, the interest of a tenure-holder. It is a permanent interest. The learned Judge has dismissed the suits for partition on the ground that the interests, though both permanent, are not of the same grade, one being an occupancy raiyat and the other a permanent tenure-holder, there cannot be a partition of the property. That view is clearly opposed to the decision of the Judicial Committee in the case of Bhagwat Sahai v. Bipin Behary Mitter 7 Ind. Cas. 549 : 37 C. 918pc : 14 C.W.N. 962 : 12 C.L.J. 240 : 8 M.L.T. 228 : 7 A.L.J. 1137 : 20 M.A.J. 907 : 12 Bom. L.R. 997 : (1910) M.W.N. 691 : 37 I.A. 198 (P.C.). Then the learned Vakil for the defendants-respondents says that, though ordinarily these oases for partition ought to be decreed, yet in the present instance they ought not to be because the partition would be a temporary one.

That argument has no foundation at all. His view of being temporary is that perhaps at some date unknown the present co-sharer landlords or their unknown descendants or representatives may apply to some Court or other to have a partition, when the property may not be able to be conveniently allotted if the present partition is effected. There is no foundation for that at all.

2. Then the other point that the defendants have raised is that they hold certain other plots in the taluq with other persons than the plaintiff and that, if these suits are allowed to proceed, they would not be able to get one compact piece of land in lieu of their undivided shares in the various plots they hold in this taluq. That is a view wholly from the defendant's point of view. The rights of the other parties have got to be considered too and, if the defendants hold these various plots in co-ownership with other tenants of various other plots of land, they cannot expect the present plaintiffs to conduct their partition suits in such a way that the defendants may be benefited with reference to some other plots that they have in the taluq. Any grievance that the defendants have that can be remedied in the present suits must be put forward by applying to the learned Judge, when he actually partitions the property, to allot to them their shares as conveniently as possible. I think the decision of the learned Judge of the Lower Appellate Court is clearly wrong and we ought to set aside the same and restore the decrees of the Munsif. The respondents must pay to the appellants their Costs in these appeals and also in the Courts below.

Chatterjea, J.

3. I agree.