

(1924) 02 AHC CK 0005
In the Allahabad High Court

Sheikh Nazir Ahmad and Others

APPELLANT

Vs

Sheikh Muhammad Sharif and Others

RESPONDENT

Date of Decision : 13-02-1924

Acts Referred:

Citation : 79 Ind. Cas. 345

Hon'ble Judges : Walsh, J; Ryves, J

Bench : Division Bench

Judgement

1. The plaintiffs and defendants in this suit are both co-sharers of Mauza Nandput. The plaintiffs applied for partition under the provisions of the Land Revenue Act, Act No. III of 1901, U.P. Both the plaintiffs and the defendants were parties to those proceedings. Subsequently, the plaintiffs brought this suit against the defendants alleging that they were in exclusive possession, and had been in exclusive possession for a long time, of certain plots of land in the village, the numbers of which are given in the plaint. They said that they had sown wheat and barley on these plots, and that the defendants had trespassed and wrongfully cut the crop. They asked for a decree for exclusive possession of the plots and for Rs. 165 damages, the value of the crop misappropriated by the defendants. All these plots were included in the lands of which partition was pending. The defendants in their first plea urged that the suit was barred by Section 233(k) of the Land Revenue Act. The learned Munsif upheld this plea and dismissed the suit in limine on the ground that it was barred by that section. The plaintiffs appealed, and the lower Appellate Court allowed the appeal and remanded the suit for determination of the remaining issues. The defendants come here in second appeal from that order of remand. It seems to us that the Legislature has given Revenue Courts exclusive jurisdiction over the partition of a mahal among recorded co-shares, and has, therefore, provided by Section 233(k) that the person shall institute any suit or other proceedings in the Civil Court with respect to partition or union of mahals except as provided in Sections 111 and 112. The learned Judge of the Court below has held that the claim for damages would undoubtedly lie in a Civil Court, and if the Trial Court was right,

the plaintiffs were without a remedy. There is no doubt that, if the plaintiffs had framed their suit so as to confine their claim merely to damages, they might have succeeded. But they have chosen to join this claim to a claim to obtain exclusive possession of certain specified plots, which undoubtedly are the subject of the partition. The learned Judge of the Court below says: "that the plaintiffs do not raise any question of proprietary title, and, therefore, the jurisdiction of the Civil Court is not ousted. One of the matters which the Revenue Court has to consider is, what particular plots should be given to a particular co-sharer on partition, and it seems to us that, where suit is brought to force the hands, as it were, of the Revenue Court, or to embarrass it in coming to a decision on such a question, that such a suit is excluded from the cognizance of a Civil Court. We think that this is concluded by authority, *Ganesh Tewari v. Salik Pande* 25 Ind. Cas. 32 : 12 A.L.J. 949, which was approved of in *Ram Subhag Singh v. Dip Narain Singh* 64 Ind. Cas. 488 : 44 A. 74 : 19 A.L.J. 865 : AIR 1922 (A.) 158.

2. The result is that we allow this appeal, set aside the order of the Court below and restore the decree of the first Court. The appellants are entitled to their costs in this Court.