
(1926) 02 AHC CK 0021
In the Allahabad High Court

Shiam Sunder

APPELLANT

Vs

Surtha Singh and Others

RESPONDENT

Date of Decision : 04-02-1926

Acts Referred:

Citation : (1926) 02 AHC CK 0021

Hon'ble Judges : Kanhaiya Lal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanhaiya Lal, J.—The plaintiff and the defendants were co-sharers in the village Keshodaspur; and by a partition effected between them some years ago their shares were separated and the plaintiff was allotted land in three of the mahals formed at the time. The village did not contain any distinct abadi area within its limits. The site occupied by the houses of the tenants of Keshodaspur, Jogidaspur, Muradpur and Baldiya was common, and was surveyed as a part of the village of Baldiya and included in the record of rights of that village, but it was recorded that the said abadi site was the common or shamlat property of the sharers of the four villages aforesaid. In the Khasra of the village of Baldiya different plots were recorded as having been in the possession of different co-sharer of the said villages separately. But the fact remains that so far as the proprietary right or co-sharership was concerned the entire abadi site surveyed or included in Baldiya was the common property of the co-sharers of all the villages aforesaid to the extent specified in the khasra of the village of Baldiya.

2. The abadi site was not included in the partition of the village of Keshodaspur because it was not surveyed as a part and parcel of that village. The present suit was filed by the plaintiff for the partition of the abadi site against the other co-sharers of the village of Keshodaspur; and the question for consideration was whether the cognizance of such a suit was barred by the operation of Section 233(K) of the U.P. Land Revenue Act (3 of 1901). That section forbids a civil Court from taking cognizance of any suit for the partition or union of mahals

except as provided in Sections 111 and 112 of that Act, in other words, it forbids the distribution of land by division between the co-sharers of a mahal except by an application to the revenue Court.

3. The Court of first instance found that the plaintiff was entitled to claim a partition in a civil Court and granted a preliminary decree for partition; but the lower appellate Court held that a civil Court was not competent to entertain the suit, inasmuch as the land of which the partition was claimed was land included in a mahal within the meaning of Section 233(K) of the aforesaid Act.

4. A mahal is defined as any local area held under a separate engagement for the payment of land revenue, provided a separate record of rights has been framed for the village in which that local area is situated or for the portion of land to which that local area appertains. If the local area consists of portions of villages, a separate record of rights should be shown to have been prepared either for the entire area or for each of the villages to which the portions appertain or for the village in which these portions are included. The abadi land in question is obviously a part either of the village of Baldiya or of the four villages above referred to; and inasmuch as it is recorded as the shamilat property of the co-sharers of all the aforesaid villages, it must be treated that different portions of this abadi area form part of each of the said villages, as recorded in the khasra, and appertain to the mahals of the co-sharers so recorded. In one sense the record of rights prepared for the village of Baldiya deal with the entire abadi area, a portion of which is here in dispute; but reading the entries made in the khewat of the village of Baldiya along with the entries made in the khasra of that village, there can be no doubt that the plots in dispute, forming a part of that abadi area, are really appurtenant to or a part of the village of Keshodaspur and that the co-sharers of that village are entitled to have it partitioned by a supplementary proceeding in the revenue Court. *Kalka Prasad Vs. Babu Manmohan Lal*, No suit for partition of any portion of that area can lie in the civil Court. Whether it is a part of Mahal Baldiya or a part of the village of Keshodaspur, a suit for partition of the land comprised in the abadi area would not be cognizable by any Court other than a revenue Court; and the lower appellate Court was right in refusing to entertain the suit. We dismiss the appeal with costs.