

(1935) 12 CAL CK 0007

In the Calcutta High Court

Case No : Appeal from Original Decree No. 16 of 1932

Syeda Fatema Banoo and Another

APPELLANT

Vs

Sr. Kumar Kamala Ranjan Roy and Others

RESPONDENT

Date of Decision : 19-12-1935

Acts Referred:

Citation : (1935) 12 CAL CK 0007

Final Decision : Dismissed

Judgement

D.N. Mitter, J.—This appeal is on behalf of Defendant No. 1 and arises out of a suit originally brought by the Plaintiff, a ward of Court, through the Manager of the Court of Wards for a declaration that certain proceedings, purported to have been taken under the Estates Partition Act (Act V of 1897 B. C.) are void from a particular point of time and that everything done there-after, including the partition of a revenue-paying estate, is void. The Subordinate Judge has granted a decree to the Plaintiff and hence the present appeal by Defendant No. 1. There are numerous Defendants to this suit. The facts on which the present appeal depends lie within a very small compass and are not in dispute. They may be briefly stated as follows: In 1911. proceedings for the partition of Touzi No. 31 of the Tipperah Collectorate, consisting of 39 Mouzas, were started and the Deputy Collector made the final partition as provided by the Estates Partition Act. The partition was approved by the Collector (See part II, page 13, Order sheet K). An appeal was taken to the Commissioner as appears from the memorandum of appeal, Ext. 7, Part II, page 23. The Commissioner heard the appeal on the 1st July, 1921 (See part II, page 25). The gist of the order, about which we shall have to advert later in greater detail, is that he sent back the case to the Collector for a fresh partition. The controversy which was raised before the learned Commissioner on behalf of the Plaintiff who was represented by Mr. Haliday, Manager, Sarail Wards Estate, was mainly this, viz., that he does not want to take the putni tenures and part of putni tenures allotted to his saham, for these tenures were not created by him or his predecessor-in-interest, but were created by other co-sharers who were in exclusive possession of the lands comprised in

the putnis. The loss which the Sarail Estate will suffer was stressed and the danger to the Government Revenue was indicated. Against this order of the learned Commissioner of the Chittagong Division, Defendant No. 25. one co-sharer, filed an appeal to the Board of Revenue. It may be stated here that one of the questions raised in the suit is whether an appeal lay to the Board of Revenue under the Act.

2. Proceeding now with the narrative of facts, it appears that the Board heard the appeal and by its order dated the 30th January, 1928 (Ex. 5, Part II, page 28), set aside the order of remand with the result that the partition approved by the Collector was affirmed by the Board of Revenue. It does not appear that the question of the want of jurisdiction of the Board to hear the appeal was raised before the Board at the time of the hearing of the appeal, but the Plaintiff afterwards filed a petition of review (65 of 1925) (page 31, Part II) in which the point questioning the jurisdiction of the Board was raised. The Board rejected the application for review on the 14th November, 1925 (Ex. 6, page 41). In the meantime possession had been delivered to the parties according to the allotments. See order-sheet, 11th May. 1923 (Ex. K, page 20, part II). In paras. 7 to 11 of the plaint, the Plaintiff complains that the Collector allotted to the Plaintiff's share 5 entire Mouzas and portions of 3 Mouzas specified in table A and 4 entire Mouzas as shown in table B, that out of the said Mouzas the Mouzas of table A and certain shares of Mouzas of table B were let out in leases by some of the proprietors other than Plaintiff's predecessors and the Plaintiff without their consent, that the Plaintiffs are not bound by the said leases and they would after the partition attach under the law to lands and Mouzas allotted to the proprietors who or whose predecessors-in-interest created those leases, that in the partition proceedings the lessees were not made parties and they are not willing to give up possession to the Plaintiffs and if after any litigation to recover possession the Plaintiffs are unable to get possession of the said Mouzas freed from the leases, the assets of the Mouzas allotted to Plaintiff's share will be greatly reduced. The Plaintiff has accordingly brought the suit for a declaration that the order of the Board of Revenue was ultra vires of the statute and the final partition is not binding on the Plaintiff. Several defences were taken in the suit, the nature of which will appear from the grounds taken in this appeal which will be presently set forth. The Subordinate Judge has negatived all the defences and has given the declaration asked for by the Plaintiff. Hence the present appeal.

3. In appeal the following grounds have been taken:--

(i) Under secs. 57 and 59 and secs. 90 and 113 of the Estates Partition Act (Act V of 1879), an appeal did lie to the Board of Revenue against the order of the Commissioner directing a fresh partition. (2) Assuming an appeal did not lie, the Board's hearing of the appeal was an irregular assumption of jurisdiction and there was no inherent want of jurisdiction in the Board which was the appellate authority as this might have been determined by the Board at a later stage. (3) The Civil Court had no jurisdiction to entertain the suit. Such jurisdiction is

impliedly barred.

4. To take ground No. 1 first:--The determination of this ground depends on a construction of secs. 57, 58 and 59 and secs. 90 and 113 of the Estates Partition Act. Under sec. 58 of the Act the Deputy Collector submits the papers to the Collector for the sanction of the Collector and the Collector is to follow the procedure laid down in cls. (2), (3), 4) and (5) of sec. 58, as the circumstances of the case may require. In the present case the Collector approved the partition under sub-cl. (a) of cl. (4) of sec. 58. Against this order an appeal was presented to the Commissioner. The learned Commissioner returned the papers to the Collector for a fresh partition. Against this order of the Commissioner an appeal was preferred to the Board of Revenue and the Board of Revenue set aside the order of the Commissioner and confirmed the partition. It is the competency of this appeal to the Board that is questioned in the present appeal before us and was also challenged in the Court below. An appeal is a creature of the statute and an appeal to the Board from certain orders of the Commissioner is provided by sec. 113 of the Act. The appeal against the order of the Commissioner is sought to be justified on behalf of the Appellant on the ground that the order of the Commissioner directing a fresh partition is an order amending the partition as approved or made by the Collector within the meaning of cl. (c) of sec. 113 of the Act. It is said that the term " amending " is wide enough to cover the case where the Commissioner sends back the case for re-partition. It is argued that the word " amending " should not receive the limited construction so as to signify " confirming with amendments "" the partition made by the Collector. In our opinion by no stretch of language can the order of Mr. De sending back the case to the Collector for repartition by the Collector be regarded as an order by the Commissioner amending the partition made by the Collector. The order amending the partition can only signify a final order made by the Commissioner amending the partition, i.e., confirming with amendment the partition made by the Collector. There is a decision of the High Court of Patna in the case of Birabhadra Ruth v. Janardan Proharaj Mohapatra 1 P. L. J. 491 (1916) which has held that there is no appeal to the Board in a case where the Commissioner after setting aside the partition made by the Collector, has directed a fresh partition by him. The Appellant argues that the Patna decision is wrong. We are unable to accede to this argument. If one examines the scheme of provisions regarding appeal to the Board, one can have no doubt that the intention of the framers of the Act was that there should be an appeal from final orders made by the Commissioner either confirming or amending the partition, not where the Commissioner directs the Collector to make a fresh partition.

5. This leads us to consider the second ground that the question of want of jurisdiction, making the order of the Board of Revenue a nullity. does not arise in the present case, for there is no want of inherent jurisdiction of the Board over the subject-matter of the partition--for an appeal would lie, if not at this stage but at a later stage, viz., after the matter comes again to the Commissioner and he has passed final orders thereon. We are unable to agree in this view. The

Board of Revenue was incompetent to hear the appeal against the order of the Commissioner directing a fresh partition by the Collector and in entertaining the appeal the Board was acting without jurisdiction. The Plaintiff has asked for a declaration that the appeal was without jurisdiction and all proceedings from the point of time when the Board entertained and allowed the appeal must be held to be void and of no effect. To this state of facts the observations of Lord McNaughten in the case of *Fischer v. Secretary of State* L.R. 26 IndAp 16 at p. 28: S.C. ILR 22 Mad. 270; 3 C. W. N 161 (1898), apply with great force:--

It is in substance a snit to have the true construction of a statute declared and to have an act done in contravention of a statute rightly understood pronounced void and of no effect.

6. The annulling of the order of the Commissioner directing a fresh partition by the Board who was acting ultra vires of the statute in entertaining the appeal cannot affect the rights of the Plaintiff. As was put by Lord McNaughten in the case of an illegal cancellation of an order of the Collector directing registration of the Appellant village in that case,

Cancellation in obedience to illegal commands of the Government can have no more effect than cancellation at the dictation of a lawless mob which the officer in charge has no power to resist.

7. It is now settled beyond controversy that an order made by a Court who has no jurisdiction to deal with the subject-matter of the suit has no binding effect on the person who is affected by the order. It is absolutely void. It is open in a collateral proceeding to impeach even the judgment of a Court on the ground of want of jurisdiction, see sec. 44 of the Indian Evidence Act. Reference may be made to two leading decisions of the Judicial Committee in the case of *Ledgard v. Bull* L.R. 13 IndAp 134: S.C. ILR 9 All. 191 (1886) and *Meenaksi Naidu's case* L.R. 14 IndAp 160: S.C. ILR 11 Mad 26 (1887). No amount of consent can cure the defect of jurisdiction. As Lord Watson observed in *Ledgard v. Bull* L.R. 13 IndAp 134: S.C. ILR 9 All. 191 (1886):

Where the judge has no inherent jurisdiction over the subject matter of a suit, the parties cannot by their mutual consent convert it into a proper judicial process although they may constitute the Judge their arbiter, and be bound by his decision on the merits when they are submitted to him.

8. In the case of *Minakshi Naidoo v. Subramaniya Sastri* L.R. 14 IndAp 160: S.C. ILR 11 Mad 26 (1887), their Lordships pointed out that a right of appeal from the decision of a Judge must be given by the statute or an equivalent authority. In this case it was held that there was no right of appeal to the High Court from the order of the District Judge to fill up a vacancy in the committee of a Pagoda and there being inherent incompetency in the High Court to deal with the appeal, consent could not confer on the High Court jurisdiction which it never possessed.

9. These two cases are sought to be distinguished on the ground that in the

present case the Board had entire seisin of the subject-matter and it had merely interfered at an earlier stage whereas in Minakshi's case L.R. 14 IndAp 160: S.C. ILR 11 Mad 26 (1887) no question of the High Court having seisin of the subject-matter arose, for it was a special jurisdiction in which the High Court did not come into the picture at all. There is nothing in the distinction, for the Board had no seisin of the appeal at that stage against the order of the Commissioner. The Board of Revenue and the other revenue Courts were given special jurisdiction for a particular purpose. They were statutory bodies vested with special jurisdiction for a particular purpose. If they act according to the provisions of the statute which created them, the Civil Court has no jurisdiction to interfere, but if they act in contravention of the statute the interference of the Civil Court becomes justified.

10. It remains to consider the third ground. It is argued for the Appellant that looking into the provisions of Act V of 1897, the Civil Court had no jurisdiction to declare the proceedings before the revenue Courts to be a nullity. It is argued that the Act pro-vides for a hierarchy of authorities to annul partition. The jurisdiction of the Revenue Courts, it is said, is exclusive and therefore a suit in the Civil Court does not lie. The point made is that the order of the Board of Revenue is final. But this finality has effect so long as the acts of revenue authorities are not ultra vires of the statute. When these authorities of limited jurisdiction act in excess of their jurisdiction, their acts become liable to be scrutinised by the Civil Court and become liable to be set aside. For all the aforesaid reasons we are of opinion that all the grounds of appeal fail and the appeal must be dismissed with costs. The costs must be paid to the Plaintiff.

Patterson, J.

I agree.