

(1908) 01 CAL CK 0030

In the Calcutta High Court

Case No : Appeal from Original Decree No. 268 of 1906

Upendra Chandra Singha Roy

APPELLANT

Vs

Muhomed Faiz Chowdhury and others

RESPONDENT

Date of Decision : 21-01-1908

Acts Referred:

Citation : (1908) 01 CAL CK 0030

Final Decision : Dismissed

Judgement

1. Taluk Chak Basta, which at one time belonged to Dewan Durga Churn, consists of 48 villages. Some of these villages are held by talukdars without the intermediate holders; Borne of the villages, however, are held, either wholly or in part, by dar-talukdars. The Plaintiff claims a share of 3 annas, 6 gundas, 2 karas, 2 krants, the Defendants No. 1, 2 and 3 who may shortly be described as the Sinha Roy Defendants, have a 4 annas share, and the remaining Defendants hold the remaining share. Defendants Nos, 15, 16, 17, 18, 19, 20, 21 and 22 are described in the plaint as having a share of 2 annas, 4 gundas, 2 karas, 1 krants, but it was conceded in the lower Court that their share was 2 annas, 5 gundas. The shares of the different parties are specified in Sch. A of the plaint; but that schedule must be read with the modification that the Plaintiff has a share of 3 annas, 6 gundas, 2 karas, 2 krants, and the Defendants Nos. 15 to 22 a share of 2 annas, 5 gundas. There was no dispute in the lower Court as regards the shares of the other co-talukdars, and now there is no dispute as to the different shares of the parties. The decree of the lower Court directed a partition and, though the decree did not specifically mention the shares of the parties which it should have done, no difficulty arises from such failure to insert the respective shares of the parties. In the decree which will be drawn up in this Court, the shares of the parties should be specified as given in the plaint with the amendments we have herein stated.

2. As regards the villages which are held either wholly or in part by dar-talukdars, the shares are different and the dar-talukdars are also different. One

of the mouzahs is said to be held entirely by the dar-talukdars, i.e., Mouzah Gajbaria. It is also said that, in 4 of the mouzahs, the dar-talukdars have a 71/2 gundas share; in 7 others, they have a 5 annas, 6 gundas, 2 karas, 2 krants share; in 9 mouzahs, they have a 4 annas share; in one mouzah, they have a 6 annas and odd gundas share; in another, they have a 1 anna odd gundas share; and in another they have a 3 annas and odd gundas share.

3. In the lower Court, a question was raised as to the necessity of making these dar-talukdars parties to the suit. All the talukdars were arrayed either as Plaintiffs or as Defendants. The dar-talukdars have an interest of the second grade or degree under the talukdars. That they have a right to see that the partition is completed in a proper manner, and that their interests are not unjustly dealt with, is undeniable, and, in fact, the lower Court has directed that they should have a right to watch the partition proceedings though that Court did not direct them to be made parties to the suit. After the preliminary decree was passed by the lower Court, a petition was presented by the dar-talukdars asking that they might be made parties to the suit. The first Petitioner was Tafazzal Ahmed Chowdhury, son of Mahomed Faiz Chowdhury. During the pendency of the appeal, Muhomed Faiz Chowdhury who was the Plaintiff died, and Tafazzal Ahmed Chowdhury is now the Plaintiff, being his legal representative. Though the present Plaintiff had asked in the lower Court, that he, with the other dar-talukdars, might be made parties, he does not press the point in this Court. He has, apparently, taken the same position as his father took during the course of the suit. Most of the talukdars did not contest the preliminary decree of the lower Court, and do not ask this Court to add the dar-talukdars as parties. The only Defendant who has preferred this appeal and asked this Court to direct that the dar-talukdars be made parties is the Defendant No. 1, Upendra Chandra Singha Roy, who is now the common manager of the estate. It would not affect his present interest, if the taluk continued to be joint as before.

4. But apart from any considerations as to the personal interest of one or other of the parties, the question of law that we have to decide is whether, in a suit for partition, the persons representing interests of an inferior grade or degree should be made parties along with the co-owners of a superior rank. The lower Court came to the conclusion that persons in an inferior situation, whether they had permanent interests or not, were not necessary parties in a partition suit. The learned vakil for the Appellant has not denied the correctness of the proposition as a proposition of law, namely, that they are not necessary parties and that no suit should fall on account of the absence of such persons as parties to the suit. But what he has pressed upon us is this--that notwithstanding that they are not necessary parties, they are proper parties and that, in view of the facts of the present case, they should be made parties to the suit, and that the case should be sent back to the lower Court for that purpose.

5. There can be no doubt upon the authorities that, in a suit for partition, persons holding interests of an inferior degree are not necessary parties. It can,

also, be stated that the authorities are clear that a person holding a permanent interest, though an interest of an inferior grade, may bring a suit for partition, as against persons who hold interests of a superior grade. In *Hemadri Nath Khan v. Ramani Kanta Roy* ILR 24 Cal. 583 (1897), the learned Judges came to this conclusion, and the decisions of this Court in *Radha Kanta Saha v. Bipradas Boy* 1 C. L J. 40 (1904), and *Nawab Dildar Ali Khan v. Bhowani Sahai Singh* ILR 34 Cal. 878 : s.c. 5 C.L.J. 643 (1907), also support the same view. So that if a putnidar who has a dar-putnidar under him declines to bring a suit for partition against his co-putnidars, the dar-putnidar, as representing the interest of such putnidar may bring a suit for partition against the co-putnidars of his own putnidar. Similarly, a putnidar may bring a suit for partition against his co-putnidars, and he may also bring a suit for partition against dar-putnidars under his co-putnidars. But, in the latter case, the co-putnidars must be made parties. We are not, however, prepared to lay down, as a broad rule of law, that in each case a dar-putnidar is a necessary Defendant in a suit for partition, if his putnidar is made a party and if such putnidar does not wish to avoid the responsibility which attaches to a party in a partition suit; that is, to see that the partition is carried out in a fair and equitable manner. We are, accordingly, of opinion that the view of law taken by the lower Court is correct.

6. In the present case if we were to direct the dar-talukdars to be made parties, the suit would become highly complicated and a large number of persons would be brought in as parties who might not be usefully or conveniently placed on the record as Defendants.

7. Their interests are not co-ordinate with the interests of the present Plaintiff and Defendants, and they may and ought to be fully represented in the suit by the persons under whom they claim subordinate or dar-taluk interests. We do not apprehend any difficulty in future from the partition being effected as directed by the lower Court. The presence of the dar-talukdars in the partition proceedings which will enable them to watch their own interests, will prevent any fraud from being practised, so far as their interests are concerned. If the dar-talukdars are made parties they may claim partition of their own shares inter se in each dar-taluk, and thus introduce almost interminable complications in the partition proceedings [see the observations at p. 111 of the judgment in *Jajneswar Dutt v. Bhuvan Mohan Mitra* ILR 33 Cal. 425 : s.c. 3 C.L.J. 205 (1906)].

8. It is, however, desirable that, where an entire village is held by dar-talukdars that village should not be allotted to any particular shareholder but should, in accordance with the rule under the Bengal Estates Partition Act, be held by all the co sharers jointly. As regards the villages in which the dar-talukdars hold a share, or shares, the partition should, if possible, be effected in such a way as to give to the dar-talukdars their proportionate shares of the land in accordance with the shares held by them as dar-talukdars. This will obviate any difficulty as regards the distribution of assets. As regards the villages in which there are no

dar-talukdars, they should be partitioned in the ordinary way and the shares should be as compact as practicable, and if possible, each set of shares should get entire villages. But as regards the villages held by dar-talukdars, a different rule must be adopted as we have indicated. The decree of this Court will specify the shares of the parties, direct that the dar-talukdars may be allowed to watch the proceedings, and it should further direct that the partition of the villages in which there are no dar-talukdars should be effected in the manner indicated above, whereas the partition of the villages in which there are dar-talukdars should be effected in a different way, each village being taken as a distinct property subject to partition amongst all the co-sharers. With these modifications, we affirm the decree of the lower Court, and dismiss this appeal with costs to the Plaintiffs-Respondents. We assess the hearing fee at Rs. 300. Let the record be sent down at once.