
(1879) 04 AHC CK 0002

Allahabad High Court

Case No: None

Maharaj Singh

APPELLANT

Vs

Harsahai Mal and
Others

RESPONDENT

Date of Decision: April 29, 1879

Citation: (1880) ILR (All) 296

Hon'ble Judges: Pearson, J; Oldfield, J

Bench: Division Bench

Judgement

Pearson, J.

Having inspected the Collector's proceedings we are of opinion that the first ground of appeal is valid and must be allowed. It appears that the plaintiffs father applied for a partition of 19 biswas and 161 biswansis share of the mauza under Act XIX of 1863, and that an objection was taken to this application by Har Sahai and the other defendants in the present suit on the ground that out of the share claimed by him 4 1/2 biswas belonged to them in proprietary right and was in his possession only as a mortgagee. They demanded an inquiry into their objection and claim u/s 8 of the Act above mentioned; and the Collector ordered the Tahsildar to receive the evidence tendered by the parties in support of their respective claims and to submit a report on the point in dispute. The Tahsildar made a full inquiry and submitted a report; whereupon the Collector decided that the applicant for partition was only in possession of 15 biswas and 6 biswansis as proprietor, the remaining 4| biswas being held by him as mortgagee. There can be no doubt that his decision was an adjudication of a question of title or of proprietary right which, not having been set aside in appeal in the manner provided by Section 9⁺ of Act XIX of 1863, became final, and bars any fresh adjudication of the question so decided. We have, therefore, no alternative but to allow the appeal and to dismiss the suit by reversal of the lower Court's decree with costs of both Courts.

-----Foot Note-----

+ [Decision of Collector equivalent to decision of Civil Court, and open to appeal.

Appellate Court may, on appeal, stay partition.

Section 9: All orders and decisions passed by the Collector under the last preceding section, for declaring the rights of parties, shall be held to be decisions of a Court of Civil Judicature of first instance, and shall be open to appeal to the District or Sudder Court, according to the value of the claim, under the rules applicable to regular appeals to those Courts. Upon such appeal being made, the District or Sudder Court, as the case may be, may issue a precept to the Collector desiring him to stay the partition pending the decision of the appeal.]