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(1927) 05 AHC CK 0040

Allahabad High Court

Case No: None

Mukand Lal and Another	APPELLANT
Vs	
Naubat Lal and Others	RESPONDENT

Date of Decision: May 16, 1927

Citation: AIR 1927 All 635 : 103 Ind. Cas. 360

Hon'ble Judges: Dalal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Dalal, J.

The plaintiffs were parties to a partition proceeding in the revenue Court. The application for partition was made by the defendants on 23rd February 1921, and a proclamation was issued u/s 110, Land Revenue Act (Local No. III of 1901) for any objections as to title to be lodged on or before the 12th of April 1921. On that date the plaintiffs did not object to the amount of the share declared to be theirs by the defendants in the application for partition. Partition proceedings were drawn up by the Assistant Collector u/s 114, Land Revenue Act, on the 9th November 1921, and they were confirmed by the Collector on the 24th August 1922. Partition was made in accordance with these proceedings and lots were prepared. The plaintiff Mukand Lal actually signed the lot allotted to him. Subsequently, over a month later, on the 17th of November 1.922, he objected that the share allotted to him was not correct, and the objection was referred to the civil Court by the revenue Court. The civil Court decided the objection, whereupon the defendants appealed to the District Judge who decreed the appeal on the ground that the civil Court had no jurisdiction.

2. This is a second appeal from the order of the District Judge. In my opinion the order was correct. When partition proceedings are drawn up, the first part of these proceedings is a decree of the civil Court declaring the nature and extent of interests of the persons applying for partition and of those who are made opposite

parties in the application for partition. This decree finally settled the proprietary rights of the parties to the proceedings. It is not possible to re-open the question of the relative rights of the parties after the partition proceedings have been drawn up. Reference was made by the appellants'' learned Counsel to the case of Tulsi Prasad v. Matru Mal [1896] 18 All. 210. This case is the foundation of subsequent decisions of this Court, What was decided there was that, if no objection was made on the date fixed in the proclamation u/s 113, Revenue Act (14 of 1873) (corresponding to Section 111, of the Act of 1901), a co-sharer was at liberty to raise an objection on a subsequent date, provided further action had not been taken under the provisions of that section and a proceeding declaring the nature and extent of the interests of the parties to the partition had not been drawn up. What has been held by this Court is that the date fixed in the proclamation is not the final date for objections, but that a revenue Court may entertain an objection at a subsequent date so long as the objection is made prior to the recording of the partition proceedings which have the effect of a civil Court decree in determining the rights of the parties to the partition. The learned Judge who delivered the judgment in the case of Tulsi Prasad drew this distinction in the last paragraph but one of his judgment, He referred to the decision of this Court in Mohammad Abdul Karim v. Mohammad Shadi Khan [1887] 9 All. 429, where it was held that an objection made subsequent to the preparation of a partition proceeding could not be entertained. The learned Judge pointed out that in that case the revenue Court had proceeded to further action u/s 113, Revenue Act, 1873, and that was the reason why the objection was held to be untenable.

3. In Tulsi Prasad''s case the objection was made before any final decree had been passed by the revenue Court settling the rights and interest of the parties to the partition, and, therefore, the objection was tenable. In the present case the proceeding u/s 114 finally determined the rights of the plaintiffs and defendants. That order had the effect of a civil Court decree, and was a matter which was res judicata between the parties. A subsequent civil Court decree cannot be passed to modify or amend the partition proceedings. This appeal is dismissed with costs.