(1909) 11 AHC CK 0010

Allahabad High Court

Case No: None

Nazar Khan and Another	APPELLANT
Vs	
Sadar Khan and Others	RESPONDENT

Date of Decision: Nov. 22, 1909

Acts Referred:

- Uttar Pradesh Land Revenue Act, 1901 - Section 111(I)(b)

Citation: 4 Ind. Cas. 404

Hon'ble Judges: Tudball, J; Richards, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This appeal arises under the following circumstances. The defendants sued for partition in the Revenue Court. The plaintiffs in this suit set up a claim to exclusive possession of a part of the property included in the application for partition. The plaintiffs were referred to the Civil Court. They, accordingly, instituted the present suit and alleged that there had been a private partition under which an area of 36 bighas, 3 biswas out of 54 bighas and biswas 4 were partitioned and that on a part of the land allotted to them by the private partition they had planted certain grove and they claimed a declaration (not that they are entitled to the possession of the whole land allotted to them by the private partition) but that they are entitled to exclusive possession of so much of the land as they had planted with trees. This was a declaration to which they were clearly not entitled even assuming that they made out a case that the private partition had actually taken place. The Court below has found that there was no private partition and we are informed by the parties that the revenue Court, which proceeded with the partition notwithstanding this appeal, has arrived at the same conclusion. It is unnecessary for us to go further into the matter and we are quite of opinion that the suit of the plaintiffs was properly dismissed. We notice, however, that the learned Judge has held that a suit instituted in a Civil Court in pursuance of an order of the revenue Court u/s 111 Clause I (b) of

Act III of 1901 is not barred even though it may not have been instituted until after the expiration of the three months mentioned in the clause. We entirely disagree with this view. Clause II expressly provides that if a party who has been directed to go to the Civil Court, fails to comply with the requisition, the revenue Court "shall" decide the question against him. We dismiss the appeal with costs including in this Court fees on the higher scale.