

(1931) 04 AHC CK 0027

Allahabad High Court

Case No: None

Nurul Hasan

APPELLANT

Vs

Mt. Aisha Bi and Others

RESPONDENT

Date of Decision: April 21, 1931

Acts Referred:

- Uttar Pradesh Land Revenue Act, 1901 - Section 111

Citation: AIR 1931 All 760 : (1931) ILR (All) 920

Hon'ble Judges: King, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

King, J.

This appeal arises out of an application for partition of certain zamindari property. The pedigree of the parties is given at p. 15 of the paper book. Mt. Aisba Bi and others were applicants for partition. Nurul Hasan, one of the non-applicants, made an objection on 7th September 1927, alleging that his sisters Mt. Aisha Bi and Fatima Bi did not get any share in the zamindari property left by the father as there was a custom in the objector's family that the daughters of a deceased person get no share in the zamindari property left by their father. He also alleged in para. 6 of his objection that the decree of the civil Court, relied upon by the applicants for partition, is only a fictitious and ex parte proceeding as against the objector and not binding upon him.

2. A reply was made to this objection on behalf of Mt. Aisha Bi. She maintained that her rights had already been declared by a decree of the civil Court, that her name and that of the other applicants had been entered in the revenue papers, and that the objector had no right to raise any objection. The Revenue Court passed an order on 20th October 1927, saying that the applicants are recorded cosharers, and their title 19 supported by certified copies of the civil Court, and other Court's orders: and

that the contention that they have come upon the property by means of fraud does not involve the question of proprietary title. The Court held that it was not empowered u/s 111, U.P. Land Revenue Act, to reopen the question of title, which had already been decided by the civil Court, and disallowed the objection.

3. This appeal is against the abovementioned order of 20th October. It has been argued for the appellant that even though the applicants have been declared by a competent civil Court to be entitled to the shares which they claimed, by the decree dated 11th January 1918, this decree was obtained by fraud and it is open to the objector to institute proceedings for having the decree set aside as having been fraudulently obtained, and the Revenue Court should not have stayed the proceedings, directing the objector to file a suit in the civil Court for setting aside the decree.

4. In our opinion the Court below has taken the correct view of its powers u/s 111. That section lays down that if a recorded cosharer makes an objection involving a question of proprietary title which has not been already determined by a Court of competent jurisdiction, then the Collector may adopt one of three courses for the purposes of getting the question determined. In the present case the provisions of Section 111 did not apply because the question of proprietary title raised before the Revenue Court had already been determined by a Court of competent jurisdiction. It may be open to the objector to institute a suit on the ground that the decree was obtained by fraud and without his knowledge, but this will not bring the question of title within the purview of Section 111. In our opinion, when the question of title has been determined by a Court of competent jurisdiction, then Section 111 is no longer applicable and it is not open to the Revenue Court to refer the objector to the civil Courts for getting the decree set aside; on the ground of fraud. The question whether the decree of the civil Court was obtained by fraud is not a "question of proprietary title" within the meaning of Section 111.

5. We think the order of the Court below is correct and dismiss the appeal with costs.