

(1880) 01 AHC CK 0011

Allahabad High Court

Case No: None

Shibban Lal

APPELLANT

Vs

Tiloke Chand and
Others

RESPONDENT

Date of Decision: Jan. 8, 1880

Citation: (1880) ILR (All) 619

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

Bench: Division Bench

Final Decision: Dismissed

Judgement

Oldfield, J.

Shibban Lal made an application u/s 108 of Act XIX of 1873, for a perfect partition of his share in Pasvara. The Assistant Collector issued the usual notification and served notices as required by law, requiring co-sharers who may object to the partition to appear before him on a specified day, and no objectors appearing he directed that the partition should be made and gave the necessary directions for carrying his order into effect. In the course of carrying out his order for a partition and of assigning the lands to each share-holder, Tiloke Chand and others claimed certain plots as belonging to them in severalty and demanded that those should be assigned to them, and the Collector decided that some of these plots belonged to one of the objectors and one was held in common. Shibban Lal appealed from this decision to the Judge, who has dismissed the appeal, holding that no appeal lay to his Court. The question in second appeal is, whether the Judge's order is correct. It appears to us to be so.

2. The only provision which allows appeals from decisions of a Collector in course of partition proceedings is contained in Section 111 of Act XIX of 1873, and by that section it is only orders and decisions passed by the Collector of the District or Assistant Collector u/s 113 for declaring the rights of parties which are held to be decisions of a Court of Civil Judicature of First Instance, and open to appeals to the

District or High Court under the rules applicable to regular appeals to those Courts. Now the orders and decisions passed u/s 113 are those on any question of title or proprietary right which arises out of objections preferred by co-sharers in possession in reply to the notice served on them u/s 111, by which they are required to state their objections to the partition taking place, that is, orders and decisions on a question of title or proprietary right arising properly out of objections preferred before any order has been made for effecting a partition, and referring to general questions of right and title affecting the right of the parties to claim partition, and not to such questions as have been decided in the case before us, which relate to the ownership of particular plots of land in the mauza, and which have arisen out of objections made after a partition has been ordered, and in proceedings taken for carrying it out, and which relate to details as to the distribution of the lands which form the subject of partition. In no way can it be held that the Collector's decision was passed u/s 113 so as to give a right of appeal. We therefore affirm the order of the Judge and dismiss this appeal with costs.