

(1880) 05 AHC CK 0015

Allahabad High Court

Case No: None

In Re: Reference by
Board of Revenue,
N.-W.P., Under Act I of
1879

APPELLANT

Vs

RESPONDENT

Date of Decision: May 19, 1880

Citation: (1880) ILR (All) 664

Hon'ble Judges: Robert Stuart, C.J; Spankie, J; Pearson, J; Oldfield, J

Bench: Full Bench

Judgement

Robert Stuart, C.J.

I concur in the view taken by the Board of Revenue on all the questions submitted to us by this reference. I would point out, however, that it is scarcely correct to describe an instrument of partition as "the final order for effecting a partition passed by any Revenue Authority." By Section 3. Clause (11), an instrument of partition is defined to be "any instrument whereby co-owners of any property divide or agree to divide such property severally, and includes also a final order for effecting a partition passed by any Revenue Authority." So that there must be in the first place the recorded act of partition or division by the co-owners or their agreement or contract to make it, and the "final order" which follows is simply the fiat of the Revenue Authority sanctioning the partition by means of which the partition becomes a completed act, and there can of course be no effectual partition until this is done. And such must also be taken to be the meaning of Section 131 of the Revenue Act XIX of 1873, which provides that "every partition shall either be made by the Collector of the District, or, if made by an Assistant Collector, be reported to the Collector of the District for his sanction and confirmation," a provision which, if taken by itself, without reference or relation to any other enactment, would seem to signify that partition of property rested exclusively on the independent action of the Collector without any necessary regard to the views or

purposes of the co-owners.

2. As to the question submitted to us in the third paragraph of the Board's letter, I am clear that the Board is right in suggesting that the stamp-duty should be computed on the whole of the undivided property which the parties seek to divide, and in my opinion no matter how far or within what limits that division may be carried out. Our attention was directed to Section 29 of the new Stamp Act, which provides that the stamp-duty on an instrument of partition shall be payable "by the parties thereto in proportion to their respective shares in the property comprised therein," and it was argued that the portion of property divided off to the particular co-sharer or co-sharers who apply for partition should only be chargeable with stamp-duty corresponding in value to the particular share or shares partitioned. But this view of Section 29 appears to me to be based upon too narrow a construction of its terms. That section does not say that the stamp-duty shall only be payable on the share or shares partitioned off, but on the contrary declares that the expense of providing the proper stamp shall be borne by the parties thereto in proportion to their respective shares in the property comprised in the instrument of partition. By the expression "the parties thereto" must be understood not merely the party or parties applying for partition, but the whole co-sharers who must necessarily be parties in the partition proceedings and equally bear the proper stamp-duty. For the effect of the partition proceedings is that the property thereby loses its identity as a previously undivided mahal, and there is nothing unreasonable in making any instrument of partition, it matters not how limited the division may be, chargeable with stamp-duty pertaining to the value of the whole.

3. In further support of this view the stamp-duty chargeable on an instrument of partition as given in No. 37 * Schedule i, of the new Stamp Act was referred to. The duty is there declared to be "the same duty as a bond (No. 13) for the amount of the value of the property divided as set forth in such instrument." Here the words "the value of the property divided" must as I have shown mean the value of the entire property affected by the partition proceedings. And on turning to No. 13 of the same schedule the stamp-duty of two annas and upwards according to the value is distinctly set out.

4. In regard to the last question referred to us, I am clearly of opinion in concurrence with the Board that the value of the property to be computed is the market-value, and that the Court Fees Act has no application to such a question.

Pearson, J.

5. The first question proposed for our consideration is whether the order passed by a Revenue Court authorising a partition to proceed, or the order passed after the partition has been made declaring the various allotments of land, is the final order for effecting a partition spoken of in Clause (11), Section 3, Act I of 1879. An order authorising a partition to proceed is in Some sense an order for effecting a partition,

but the order which declares the various allotments of the land is in my opinion the final order which effects the partition.

6. The next question is the extent of the property specified in the instrument of partition. That instrument sets forth that of such and such property previously undivided a certain portion is assigned to A the applicant for partition. We are asked whether the entire property is to be valued for the purposes of the Stamp Act or merely the portion assigned to the applicant for partition. In my opinion the entire property has been the subject-matter of partition, and the stamp-duty required by No. 37, Schedule i, Act I of 1879, should be calculated upon its value and not merely on the value of the portion assigned to the applicant for partition. The portion assigned to the applicant could only be separated and allotted to him in severalty by a process which dealt with the entire property and separated and allotted the remainder of it to another party. The opinion now expressed appears to be supported by the terms of Clause e, Section 29 of the Act, which provide that the stamp-duty shall be payable in the case of an instrument of partition, not by the applicant for partition, but by the parties thereto,--and the other co-sharers in the entire undivided property must be parties to the partition of it equally with the applicant for partition--in proportion to their respective shares in the property comprised therein, and it cannot be denied that the partition comprises the entire undivided property.

7. The last question is how the value of the property is to be computed, whether in reference to its actual value in the market, or to the rules laid down in the Court Fees Act for determining the fee payable on plaints and appeals. The Court Fees Act has no relevance to the present matter, and in my opinion the market value of the property, the subject-matter of partition, should furnish the basis for calculating the stamp-duty required by No. 37, Schedule i, Act I of 1879.

8. Thus on the questions referred by the Board of Revenue, I have arrived at the same conclusion as the Board has formed.

Spankie, J.

9. Looking at the first question, the "final order for effecting a partition passed by any Revenue Authority" appears to be that which would be made u/s 131, Act XIX of 1873. I find no place in the Act for the agreement referred to in the 21st paragraph^{*} of the Board's Circular. The notification published by the Collector u/s 131 of the Act would probably contain all the particulars referred in the Board's letter.

10. As to the second question, looking at the definition of "instrument of partition" in Clause (11), Section 3 of Act I of 1879, it would seem that it is "any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also the final order for effecting a partition by any Revenue Authority." By Section 29 of the Act, in the absence of an agreement to the contrary, in the case of an instrument of partition, the expense of providing the proper stamp

is to be borne by the parties thereto in proportion to their respective shares in the property comprised therein, or when the partition is made in execution of an order passed by the Revenue Authority in such proportion as such Authority directs. The property comprised in the instrument of partition has to be valued, and the parties thereto contribute towards the expense of the stamp in proportion to their shares in the property. If a stamp of one hundred rupees was required, and the property was worth ten thousand rupees, and five shareholders, being co-owners, divided or agreed to divide in severalty, the proportionate value of their shares would be two thousand rupees each, and each one would pay the duty on two thousand rupees, unless there was an agreement to the contrary, or where a Revenue Authority had directed otherwise in a partition made under his orders. The last part of Clause e, Section 29 of the Act, gives the revenue officer full authority in the matter and the "final order" is the instrument of partition.

11. As to the third question the value is doubtless the market value.

Oldfield, J.

12. I agree with the Board of Revenue that the order which declares the various allotments of the land requires the stamp. The stamp should be paid on the value of the whole property which by the instrument of partition the co-owners are dividing or agreeing to divide: so far as I understand this is the view taken by the Board.

13. I also agree with the Board that the stamp should be computed on the market-value of the property.

*[Article 37.

Description of instrument.

Proper stamp-c

Instrument of partition

... ..

The same duty as a Bo
for the amount of the
the property divided
in such instrument,]

*Rule 21.--"If all agree to the proposals or to such amended proposals as the Collector may think fit to make, their agreement shall be recorded and attested by the Collector. If any objections are raised, the Collector shall hear them and record an order overruling them or amending the proposals to meet them as he thinks fit."