
(1926) 28 BOMLR 523 : 94 Ind. Cas. 656

Bombay High Court

Case No: Second Appeal No. 403 of 1925

Timmanna Parmeshwar
Bhat

APPELLANT

Vs

Govind Ganpati Bhat

RESPONDENT

Date of Decision: Jan. 4, 1926

Citation: (1926) 28 BOMLR 523 : 94 Ind. Cas. 656

Hon'ble Judges: Norman Macleod, J; Coyajee, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Norman Macleod, Kt., C.J.

A partition decree was passed in Suit No. 306 of 1911 on April 8, 1914. By that decree it was declared that

plaintiff along with defendants Nos. 4 and 5 was entitled to ones sixth share in the whole of the property at Gokaran, other than the house-site

situate in Survey No. 27, to one-sixth share in Survey Nos. 1 and 43 in addition to Survey Nos. 51 and 54, to one acre in Survey No. 52 and two

acres and two gunthas in Survey No. 36 all situate in the village of Kadekod. The lands were to be got partitioned through the Collector, and the

house was to be got partitioned through the Commissioner.

2. The Collector endeavoured to carry out the terms of the decree, but he seems to have found some difficulty in doing so, with the result that he

has not followed the direction in the decree. Fur instance, he allowed the plaintiffs four acres and twelve gunthas in Survey No. 1 in Kadekod,

although the whole area was five acres and one guntha and plaintiffs were held to be entitled to one-sixth only.

3. We can only gather that the Collector was reading the decree together with the judgment, and thought that the judgment was right and that the decree was wrong.

4. The present appellants, defendants Nos. 28 to 30 in the trial Court, raised objections, and asked the Subordinate Judge to reopen the partition.

An objection was taken that once the Collector had effected a partition the Court could not send the case back to him for re-partition. But it seems

to me that the case referred to, Bhimangauda Konapgauda Patil Vs. Hanmant Rangappa Patil, , merely decided that if the Collector carries out the

terms of the decree and divides the property, a party who is not satisfied with the division cannot ask the Court to inter-fere with the partition

effected by the Collector. But if the Collector disregards the terms of the decree and divides the property in contravention of its terms, clearly the

Court is entitled to interfere. We think then that the Subordinate Judge was right in referring the case back to the Collector to partition the property

in accordance with the terms of the decree. It may be that the decree does not conform to the judgment. If that is the case, it is very strange that

although the decree was passed in 1914, and although an appeal was filed against that decree, it should not have been discovered until the present

time that corrections were required in the decree. At present we have no application before us to amend the decree, and we can only lay it down

as a correct principle that the Collector, when asked to partition lands in accordance with a decree, must follow the terms of the decree, and he is

not at liberty to read the decree together with the judgment so that he partitions the lands in a manner which is not contemplated by the decree. We

allow the appeal and restore the decision of the Subordinate Judge with costs throughout.

Coyajee, J.

5. I agree.