
(1870) 01 CAL CK 0001

Calcutta High Court

Case No: Regular Appeal No. 101 of 1869

Janki Bibi and Another

APPELLANT

Vs

Fatteh Bahadur

RESPONDENT

Date of Decision: Jan. 19, 1870

Judgement

Glover, J.

The point for decision in this appeal is, can the purchaser of a share in an undivided lakhiraj estate sue his coparceners for a batwara of his own portion. The plaintiff bought a 5-anna, 7-ganda share of the estate from one of the owners, and seeks to have that share separated from those of the other share-holders, on the ground of disputes, between the parties, and losses and inconveniences in consequence of those disputes. The defendants deny the right of a share-holder in a lakhiraj estate to have his share divided off from the others, and contend generally that the plaintiff has no cause of action, The Subordinate Judge held that the plaintiff could have his share separated, and against this decision the defendants appeal.

2. I think we may dispose of the technical objections raised to the plaintiff's suit, without going minutely into the evidence as to the precise nature and extent of the inconveniences and losses detailed in the petition of plaint, inasmuch as if the question of right to a batwara be decided in the plaintiff's favor, the refusal of the defendants to allow the partition would of itself be a sufficient cause of action.

3. With regard to the general issue, it is contended by the appellants that there is no law to compel the joint owners of a lakhiraj estate to submit to a partition; but they are entitled to enjoy their property in the way they have always enjoyed it; and that what the plaintiff bought was the right to receive a share of the rent of the estate collected, as they had always been jointly. The appellants contend, further, that the decree of the Subordinate Judge is incapable of execution, and is, therefore, a bad decree; that the Civil Court has no power to send an Ameen to make the batwara; and that a partition could only be made by the Collector.

4. In support of this contention, we have been referred to several rulings of the late Sudder Court and of this Court. The first of these is the case of *The Collector of Dinagepore v. Anand Moyee Chowdhrair* S.D.A. Rep. 22nd July 1857, 1277, and in this the Sudder Court held that "the proper and substantial ground on which a legal right to a division could be based was the common responsibility which the Decennial Settlement imposes on the proprietors of an estate in co-parcenary, whereby the co-sharers are liable to lose the whole estate through the default of one of their body. But where no such common responsibility exists, and the liability is distinct and defined, absolving the proprietor from such risks as co-sharers are subject to, the community of interests in other respects, either through joint management of the lands or sharing rateably in the collections, cannot, in our opinion, entitle a proprietor so situated to force on the others a separation and division of the land." The appellants argue from this, that if in a revenue-paying estate certain particular arrangements made with Government absolved the co-sharers from mutual responsibility for the revenue, and, therefore, barred their right to force a division, a fortiori, there can be no such forced partition where the estate was lakhiraj, and no question of Government revenue existed. I do not think that we can fairly apply this precedent to the present case. Revenue-paying estates are subject to a particular law in the matter of partition, and the Judges considering the peculiar circumstances of the case before them, circumstances which appeared to do away with the risk that, under the old law, all co-sharers in a joint estate ran in respect of the Government revenue, held that a partition could not be made without the consent of the other share-holders. The ruling had reference to a particular law only, and the Court refused to strain that law to the inconvenience or prejudice of the general body of share-holders. In the present case, we have an entirely different state of things; and although the reasoning of the learned Judges of the Sudder Court may be taken into consideration so far as it affects the principle on which a batwara ought to be granted, their decision is not one that can be quoted as a ruling in point on the case now before us.

5. The next case referred to is *Durgakant Loohoori v. Kalle Mohun Guhoo* 7 W.R. 51, and in this it is laid down that lands held in joint possession, each proprietor receiving his portion of the rent according to his interest in the land, cannot be divided under the batwara laws. This decision, like the other, was in respect of a revenue-paying estate and had special reference to the batwara law. The estate was split up into several talooks, each of which paid its revenue separately. In any case, the plaintiff here does not ask for any partition under the batwara law, nor in fact could she, as that law has reference to revenue-paying estates only, and has nothing to do with lakhiraj properties.

6. The third decision--*Ridai Nath Sandyal v. Iswar Chandra Saha*¹, has not been reported. It was passed on the 31st July 1865, by the High Court, Morgan and Pandit, JJ., on a dispute between the patnidars of an undivided share of a zamindari held by the joint proprietors. In this case it was held that there was no law that allowed one patnidar to sue another patnidar for a partition, there having been no contract between the two, or

between the patnidar and his zemindar, to divide. In this case also, the estate was a revenue-paying one, and the parties were patnidars in the shares of different zemindars, and the only part of the judgment that can be adduced as referring to the matter before us, is that where the Judges say, that except the Regulation of 1814 (the batwara Regulation) they know of no law by which the plaintiff could force on the separation without an agreement to do so by the opposite party.

7. With reference to the appellant's objection that the Civil Court has no power to make the batwara by its own officers, but must refer the matter to the Collector, who alone has the machinery necessary for the purpose, we have been referred to the case of *Keerutnath Ojha S.D.A. Rep. (1852), 550*. This ruling appears to me in no way to assist the appellant's case. The suit was brought in the Civil Court to compel the Collector to make a batwara of a revenue paying estate, and it was laid down that, in such cases, the agency of the Revenue Authorities was necessary. No doubt it was because the interest of Government in the revenue was to be protected, and the case came under the Batwara Law of 1814; but in the present case the estate is lakhiraj, and Government has no interest in the matter. The Judges did not rule that, in all cases of partition, the agency of the Collector was the only one to be employed, but that in suits which affected the revenue, the Collector was to arrange for the batwara.

8. Lastly, it was argued that the law appointing Ameens (Act XII of 1856) did not give these officers powers to make batwaras, and that Act VIII of 1859, section 225, only contemplated divisions of estates by the Collector. This last argument contains, it seems to me, the game fallacy as the others advanced by the appellants, inasmuch as it entirely ignores the difference between revenue-paying estates and those which pay no revenue. Section 225 refers solely to the former description of estates, and it is too much to argue that because there is no other section providing for the division of other descriptions of estates, that, therefore, such estates cannot be partitioned except by the Collectors, And with regard to Act XII of 1856, clause 2, section 5 of the Act appears to me to give all the powers necessary.

9. On the other hand, it is clear that there is no statutory bar to the relief which the plaintiff seeks ; and it seems to me, therefore, that he has an inherent right to enjoy his purchase in the way that he may think most advantageous to himself, so long as that enjoyment does not interfere with the rights of his co-parceners. This has been declared in a judgment of the High Court in the case of [Rani Samasundari Debi Vs. Messrs Jardine, Skinner and Others](#) , where it is laid down that "in all cases of joint " ownership each party has a right to demand and enforce partition ; in " other words, a right to be placed in a position to enjoy his own right "separately and without interruption or interference by the other:" (Spence's Equitable Jurisdiction, Court of Chancery, Volume I, page 653 ; Story's Equity Jurisprudence, sections 648, 649). In this case the parties were co-patnidars, and there was no question of Government revenue concerned. A similar ruling is to be found in the case of *Mothoor Chunder Kurmocar v. Manick Chunder Bungo* 6 W.R. 192. In this case, the parties were co-sharers in a shikmee talook, and it was held that a suit for

partition would lie in the Civil Court, the partition of the shikmee talookdar's share not affecting the Government revenue. And the rule that a purchaser is entitled to get possession of what he has bought is still more broadly laid down in the Full Bench decision of this Court passed in the case of Koonwur Bijoy Keskub Roy Bahadoor v. Shama Soonduree Debee 2 W.R. Mis. 30, and it was decided that a Mahomedan purchaser of a share of a family-house occupied by Hindus was entitled to a separation of that share and to possession after separation.

10. The right to a partition by the Civil Court as between co-parcener, ryots, has also been laid down in the case of Gouree Sunkur Roy v. Anund Mohun Mitter 9 W.R. 487.

11. It appears to me, therefore, that the plaintiff in this suit was entitled to apply to the civil Court for a partition of his purchased share, and that the Subordinate Judge was right in giving him a decree. He had also, it seems to me, the power of ordering the partition to be carried out by his own Court officers.

12. The question remains as to whether we are bound to refer the decision of this appeal to the Full Bench, in consequence of the ruling in the case of Ridai Nath Sandyal v. Iswar Chandra Saha 4 B.L.R. App. 57N. I do not think that we need do so. In the first place, that decision does not lay it down as a point of law that a batwara cannot be had except on contract between the parties, but in any case the contrary opinion has been held in several later decisions, in one of which I observe that Mr. Justice Pandit took part; and we should, I imagine, be justified in following those rulings without referring the case to a Full Bench.

13. I would dismiss this appeal with costs.

Kemp, J.

14. I am of the same opinion. The cognizance of a suit of this nature by the Civil Court is not barred by any Act of Parliament or by any Regulation (section I, Act VIII of 1859). The Collector could not make the batwara under the provisions of Regulation XIX of 1814. The civil Court alone has jurisdiction, and the division must be made by the Court, either by the Moonsiff or by an officer of the Court. I concur in dismissing the appeal with costs.

¹ Before Mr. Justice Morgan and Mr. Justice Shumbhoc Nath Pundit.

Ridai Nath Sandyal (One of the Defendants] v. Iswar Chandra Saha (Plaintiff).

Special Appeal, No. 318 of 1865, from a decree of the Judge of Mymensing, dated the 21st November 1864, affirming a decree of the Principal Sudder Ameen of that district, dated the 21st June 1864.

31st July, 1865.

Baboos Anukul Chandra Mookerjee and Sri Nath Das, for appellant.

Baboo Ramesh Chandra Miller, for respondent.

Pundit, J.--The special appellant is a patnidar of a four anna share, and the plaintiff of another similar share of an undivided eight-anna share of a zamindari, held as two separate estates by the two zemindars, one of whom gave the patnis to the plaintiff, and the other gave the patni to the appellant. The lands of the entire eight annas are undivided. Plaintiff sues for division and partition of lands, and brings his action against the special appellant, who had never entered into any contract with the plaintiff, or his landlord to divide the lands. The two landlords were made defendants, The plaintiff's landlord gives his consent to the suit, and the other landlord has not appeared.

The right of any one of the two zemindars to ask for a batwara as against each other is provided for by a special law of 1814, but we cannot discover, under what law the plaintiff has any right to force the special appellant to divide. If there had been any engagement between the plaintiff and the special appellant, even if the landlords on both sides had objected, the case might have been decided as between the two tenants without any prejudice to the rights of the two zemindars. Actions to enforce contracts can be filed in Civil Courts.

If the present suit be supposed by a fiction of law to be one on behalf of the landlord of the plaintiff for a batwara as against the landlord of the special Appellant, it is clear the law does not provide for any such suit being brought in any Civil Court. The Collectorate is the special tribunal appointed for this matter. We accordingly decree the appeal with costs, and reversing the decisions of both the lower Courts with costs, dismiss the claim of the plaintiff.

F., 20 C. 379.(382); R., 4 B.L.R. App. 55 (57) : 13 W.R. C.R. 74; 37 C. 918 (P.C.) : 20 M.L.J. 907 (915) : 14 CWN 962 (Privy Council) .