

(1926) 02 CAL CK 0001

Calcutta High Court

Case No: None

Atul Chandra Kundu

APPELLANT

Vs

Bhusan Chandra Kundu

RESPONDENT

Date of Decision: Feb. 24, 1926

Acts Referred:

- Partition Act, 1893 - Section 3

Citation: AIR 1926 Cal 1190 : 97 Ind. Cas. 690

Hon'ble Judges: Page, J; Cuming, J

Bench: Division Bench

Judgement

Cuming, J.

In the suit out of which this" appeal has arisen the plaintiff sued for partition of a certain tank under the provisions of Act IV of 1893. The plaintiff was the 14-annas co-sharer and the defendant was the 2-annas residue co-sharer. The plaintiff asked that he might be allowed to buy up the defendant's 2-annas share at a valuation by the Court or in the alternative the property should be sold to the highest bidder and the proceeds distributed amongst the co-sharers. The defendant u/s 3 of the Partition Act prayed for a valuation of the plaintiff's share and for leave to buy up the said share at the valuation fixed by the Court.

2. The trial Court held that the defendant was entitled to buy the share of the plaintiff and he valued the plaintiff's share at Rs. 1,400. On appeal the learned District Judge on a consideration of the case of Debendra Nath Bhattacharjee v. Hari Das Bhattacharjee 7 Ind. Cas. 844, 13 C.L.J. 322 : 15 C.W.N. 552, and on a consideration of the Partition Act held that the defendant was not entitled to compel the plaintiff to sell his 14-annas share to him at a valuation fixed by the Court. He considered that the proper course would be to direct a sale of the property among the co-sharers and it would be given to that share-holder who offered to pay the highest price above the valuation made by the Court. A consideration of the Partition Act would make it perfectly clear that the learned District Judge has

obviously fallen into an error in his interpretation both of the case of Debendra Nath Bhattacharjee v. Hari Das Bhattacharjie 7 Ind. Cas. 844 13 C.L.J. 322 : 15 C.W.N. 552, and also of the sections of the Partition Act. Section 2 provides that "whenever in any suit for partition...it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the share-holders therein or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property, and distribution of the proceeds would be more beneficial for all the share-holders, the Court may, if it thinks fit, on the request of any of such share-holders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds." Section 3 provides that where a Court has been requested to direct a sale under the foregoing section any other co-sharers may apply for leave to buy at a valuation the share or shares of the party or parties asking for a sale. Now in this case it was the plaintiff the 14-annas co-sharer who asked for a sale. It is, therefore, clear from a reading of the section that it was open to the defendant the 2-annas co-sharer to ask that the share of the plaintiff might be sold to him at a valuation.

3. The learned Advocate who has appeared for the respondent would seem to contend, relying upon Clause (2) of Section 3 that Clause 2, Section 3 contemplates allowing the plaintiff himself to bid apparently for his own share. He would seem to contend that where two or more co-sharers wish to bid, the whole property should be put up to auction. Clause 2 of Section 3 only applies to a case where more than one co-sharer other than the person who has asked for the sale desire to buy the share of the party who has asked for the sale. The case of [Guntupalli Ramakrishnayya Vs. Guntupalli Pitchayya and Others](#), does not in any way support the case of the respondent. All that the decision held was that the defendant could not be compelled to transfer his share to the plaintiff at a valuation merely because the latter happened to have possession of the property at the commencement of the action. This is not the same thing as saying that the plaintiff cannot be compelled to transfer his share at a valuation to the defendant which is clearly provided for in the provisions of the Partition Act.

4. The result is the appeal must succeed. The order of the learned District Judge is set aside and that of the Subordinate Judge is restored.

5. The appellant is entitled to his costs both here and in the lower Appellate Court.

Page, J.

6. I agree.