(1868) 09 CAL CK 0001

Calcutta High Court

Case No: Special Appeal No. 102 of 1868

Rajchandra Roy Chowdry and Others		APPELLANT
	Vs	
Girishchandra Roy Chowdry and Others		RESPONDENT

Date of Decision: Sept. 9, 1868

Judgement

Mitter, J.

We are of opinion that a suit, like the present, cannot be maintained in the Revenue Courts. It is admitted that there is no legal contract in existence between the plaintiffs and the tenants, defendants, by virtue of which the former can claim, from the latter, a 10-anna share of the rent payable by them on account of their holding. It is also admitted that rent has never been collected from the tenants, defendants, by the plaintiffs, separately from their co-sharers. The plaintiffs allege that a valid and binding partition has been made between them and their co-sharers, and that the result of this partition has been to constitute them the proprietors of a 10-anna share of the land of which the holding of the tenants, defendants, consists. But the plaintiffs are unable to state that the tenants, defendants, have received any authority or permission from their other landlords, viz., the co-sharers of the plaintiffs, to recognize them as the holders of such a share. These co-sharers, on the other hand, who were made defendants in the Court below, and who are now special appellants before us, deny that such a partition has ever been made, and they also deny that the plaintiffs are entitled to the share they have claimed. The tenants, defendants, say that the plaintiffs and the special appellants have been quarrelling with each other, regarding the extent of their shares, and that so far as they themselves are concerned, they are ready to bring into Court the whole amount of their rent, leaving it to the Court itself to determine the share to which the plaintiffs are lawfully entitled. Upon this state of facts, it is clear that before the plaintiffs can succeed in such a suit, there must be an adjudication between them and the special appellants, upon the question of partition. Indeed, the plaintiffs

themselves appear to have asked for such an adjudication, as is clearly shown by their own plaint. We are of opinion that the Collector''s Court is not the proper tribunal to adjudicate upon such a question, and between such parties; and the plaintiffs'' suit must necessarily fail. Disputed questions of title between rival proprietors, whether co-sharers or otherwise, can be determined by the Civil Courts only; and parties seeking for the determination of such questions must resort to those Courts for relief. It has been said, that we might strike off the names of the special appellants from the category of defendants, and treat this suit as a simple suit for rent between the plaintiffs and the tenants, defendants. But we are unable to see how such a course could be adopted even if we were otherwise inclined to hold that the plaintiffs are entitled to alter their case at this late stage of the proceedings. The case had been throughout treated by consent of parties as a case between the plaintiffs on the one side, and the tenants, defendants, and the special appellants on the other. Be this as it may, it is abundantly clear that the presence of the special appellants is absolutely necessary for the protection of the tenants, defendants. If the tenants, defendants, had entered into any engagement with the plaintiffs to pay to the latter a particular share of their rent, it would have been for them to protect themselves in the best manner they could in any subsequent litigation between themselves and the special appellants. But in the absence of such a contract, the tenants, defendants, cannot be fairly subjected to the risk of such a litigation, and the Court is bound to see that any decree that it passes against them in this case, will be a sufficient protection to them against any adverse claim for rent, that the special appellants might hereafter choose to bring. Now it is clear, that no such protection can possibly exist, unless the question of partition is settled between the plaintiffs and the special appellants before us. According to our view of the case, there must be an adjudication upon the question of partition, and in order that this adjudication might be a sufficient protection to the tenants, defendants, it must be of such a character as to bind their other landlords, i.e., the special appellants. Suppose, for instance, the Collector were to pass a decree against the tenants, defendants for a 10-anna share of their rent, but after determining the question of partition, as that question must be determined before any such decree can be passed; and suppose also that the question was determined as between the plaintiffs and the tenants, defendants, only, what would be the effect of such a determination in any future suit that the special appellants might choose to bring against the tenants, defendants, claiming a larger share of the rent than that which is allotted to them under the partition in question? Would the special appellants be prevented by such a determination from proving against the tenants, defendants, that no such partition has ever been made? And what would be the answer of the tenants, defendants, when such a fact is proved against them, and in such a suit? If the names of the special appellants were struck off from the record of this case, the decision passed in it would not be even admissible as evidence against them in any future litigation for rent between them and the tenants, defendants. The dispute that is going on between the plaintiffs and the special appellants, is no way

attributable to the tenants, defendants according to the admitted facts of this case; and the tenants, defendants, ought not, either in law or equity, to suffer for such a dispute. The plaintiffs might be entitled in law to the 10-anna share they have asked for, but before recovering that share from the tenants, defendants, they are bound to show that the latter will be protected from the risk of being compelled to pay their rent twice over, leaving aside the trouble and expense of a double litigation for the rent of one entire holding. It is clear, therefore, that before any decree can be passed against the tenants, defendants, there must be an adjudication upon the question of partition between the plaintiffs and the special appellants; and we have already observed that the Revenue Courts are not competent to adjudicate upon such questions, and between such parties.

2. It has been contended, that the question of partition has been already settled between the plaintiffs and the special appellants, in a suit in which one Kishori Choudhrani, the mother of the special appellants, was plaintiff, and the plaintiffs in this case and the special appellants were defendants. It is admitted, however, that that suit related to a zamindari which has no connection with the land occupied by the tenants, defendants. Under such circumstances, it is clear, that the direct legal operation of the decision that has been passed in that suit, cannot extend beyond the property to which it related. Any other effect that might be attached to it, is a mere question of evidence. We have already given our reasons for holding that the Revenue Courts are not competent to determine a disputed question of title between rival proprietors, and any enquiry relating to a mere matter of evidence bearing upon such a question would be, therefore, superfluous. We decline to pass any opinion upon the value of the decision referred to, as a mere matter of evidence, as the issue upon which it bears is not one which we can try in the present suit. We reverse the decisions of both the lower Courts. The plaintiffs will pay to the tenants, defendants, the costs incurred by the latter, in the Court of first instance only, but they must pay to the special appellants the costs of all the Courts.