

(1868) 07 CAL CK 0006

Calcutta High Court

Case No: Miscellaneous Appeal No. 196 of 1868

Ramlochan Das

APPELLANT

Vs

Mansur Ali

RESPONDENT

Date of Decision: July 2, 1868

Judgement

Sir Barnes Peacock, Kt., C.J.

I think that the decision of the Judge is right, and that what the plaintiffs recovered was a share of an undivided estate; and, consequently, that they were not entitled to be put into possession of any specific lands as the share of what they had purchased. The specific lands, which constitute the share of the plaintiffs, can be ascertained only by partition, and not in execution of this decree. If the plaintiffs had been entitled to specific lands, as the share which they had purchased, they would have been able to give in their plaint the boundaries of the specific lands which they claimed; but they have not done so. The whole of the confusion and of the litigation subsequent to the decree of the 18th April 1864, has been caused by the want of sufficient care on the part of the Judge who pronounced the decree, in specifying what he intended that the plaintiffs should recover. Instead of declaring specifically whether the plaintiffs were to recover the share in an undivided estate which they had purchased, or specific lands as representing that share, the Judgment says that the plaintiffs will get possession with wasilat. But the land, of which they were to get possession, is wholly undefined, and it is uncertain whether the Judge meant that they should get possession of a share of an undivided estate or of some specific lands. The Principal Sadder Ameen and the present Judge have both, as it appears to me, put a proper construction upon the judgment of Mr. Balfour.

2. In preparing decrees, the Judges ought clearly to define what are their intentions, and the vakeels who represent the parties do not perform their duty simply by arguing the case, but they ought always to see that the decrees are drawn up according to the judgments of the Judge. If the Judges and the vakeels were more attentive to their duties in this respect, much of the litigation which commences after a decree is pronounced, and which frequently lasts for many years afterwards,

would be avoided. A little time bestowed in seeing that the decrees are drawn up properly, would save the expenditure of much valuable time, which is often incurred in endeavouring to arrive at the real meaning of the decree. The order of the Lower Court is affirmed.

¹[Sec. 225:-- If the decree be for the division of an estate, or for the separate possession of a share of an undivided estate, paying revenue to Government, the division of the estate or the separation of the share shall be made by the Collector under the orders of the Court, according to the rules in force for the partition of an estate paying revenue to Government.]

Division at estate or separation of share how to be made,