

(1869) 03 CAL CK 0016

Calcutta High Court

Case No: Special Appeal No. 1898 of 1868

Ramsahaya Sing and Others

APPELLANT

Vs

Syed Muzhar Ali and Others

RESPONDENT

Date of Decision: March 4, 1869

Judgement

Norman, J.

We are strongly inclined to think that this suit is not maintainable at all. The facts are, that in the year 1274 a batwara, or partition, of two estates paying revenue to the Government, called Ibrahimpore and Douloutpore, took place. The several shareholders received allotments equal to 3 annas 10 gandas, 9 annas 4 gandas, and 3 annas 5 gandas and odd cowries. The present plaintiffs obtained a share of 3 annas 5 gandas. By Regulation XIX of 1814, section 4, clause 3, it is enacted that, if one, or two, or more proprietors of joint estate shall be desirous to have separate possession of his or their respective share or shares, "or if two or more of them shall be desirous to have their shares separated, and to hold them as a joint estate, they are to make a written application for that purpose to the Collector, & c. The Collector, on receipt of the application, shall publish an advertisement, notifying the same to all parties concerned, and specifying that he shall proceed to make the division applied for in fifteen days from the date of the publication of the advertisement, unless any person or persons in possession of the estate, or any part thereof, shall, before the expiration of that time deny, by a writing under his or their seals and signatures, and attested by two credible witnesses, the right of such claimant or claimants to the share or shares so claimed by him or them. In case of any such objection, the Collector is not to proceed to the division, until the disputed title be established in a Court of Justice, or admitted by the party or parties so disputing it, by a writing to that effect under his or their seals and signatures, and attested by four credible witnesses." Two objections were taken to the partition, but the objections now raised were not then taken. The partition was eventually confirmed by the Commissioner under the powers conferred by section 20 of Regulation XIX of 1814, as modified by Regulation I of 1829, section 4. The Collector

put the parties in possession of the estates respectively allotted to them as provided for by sections 19 and 20 of Regulation XIX of 1814. In the present suit the plaintiffs seek to re-open the questions which were then decided. They alleged that the shares to which they are entitled are larger than those alleged on the one side, and admitted by them to have been their shares at the time of the partition. We entertain great doubt as to whether the suit is maintainable at all, and the doubt is strengthened by the rulings of this Court in *Shaikh Zakur Ali Chowdhry v. Jugdessuree* (1 W.R., 323), *Rughoobur Sing v. Huree Pershad* (6 W.R., 75). Prima facie, the decision of the Commissioner on the question of partition is final, and we cannot see that any ground for reopening the question is even suggested. We need not go into that question and decide it because we are of opinion that the special appellants have wholly failed to show that the Principal Sudder Ameen was wrong in any points in which it is suggested in the grounds of special appeal that he has committed errors in law. It appears to us that there is no ground for supposing that the Principal Sudder Ameen did not consider the report of the amin. The report of the amin does not show that the defendants were in actual possession of the shares now claimed by them previous to the date of the batwara.

2. The Principal Sudder Ameen is quite right in saying that 7 cowries awarded by the Munsiff, out of the 9 annas pati in Ibrahimpore, were not claimed in the plaint, and he was quite justified in rejecting the copy of the hissanama; the original not having been produced or proved in any way. It is very difficult in this special appeal, owing to the great confusion in the case, to form a satisfactory opinion as to the real merits of it. We can only say that we see no reason to conclude that the decision of the Principal Sudder Ameen is not right. The appeal will be dismissed with separate sets of costs payable to the different respondents who have appeared.