

(1910) 05 CAL CK 0051**Calcutta High Court****Case No:** None

Gopala Roy

APPELLANT

Vs

Ram Kishen Thakur and Others

RESPONDENT

Date of Decision: May 16, 1910**Acts Referred:**

- Estates Partition Act, 1897 - Section 64, 65

Citation: 6 Ind. Cas. 450**Hon'ble Judges:** Vincent, J; Chatterjee, J**Bench:** Division Bench**Judgement**

1. This appeal arises out of proceedings in effectuation of a partition decree.
2. One of the plots No. 40 fell to the share of the defendant No. 1. There is an orchard,, upon this plot. The defendants Nos. 3 and 4 claimed to have been in possession of this orchard as their own and they applied to the officer making the partition for assessing a fair and equitable rent upon this plot so that they might continue to possess it as before, paying the rent fixed to the defendant No. 1.
3. The first Court found that their possession was not; made out. The lower appellate Court, however, upon the evidence, found that their exclusive possession had been made out.
4. It appears from the record that this exclusive possession was of a long duration and the only question is whether the Civil Court has any power to assess fair and equitable rents upon any plots of land under circumstances obtaining in this case.
5. It is provided by Sections 64 and 65 of the Estates Partition Act (V of 1897) that the partitioning officer may assess a fair rent upon dwelling houses, gardens, etc., which had 1)3611 in exclusive possession of one of the co-sharers, falling into the patti of another osharer. It has been held, and we think properly, that the principles laid down in the Batwara Act may, as far as they apply, be used as guides to the Civil

Court in making a partition. In the case of Janokee Bibee v. Luchman Pershad 17 W.R. 137, Mr. Justice Loch and Mr. Justice Dwarka Nath Mitra are reported to have said: "Now Regulation XIX of 1814 lays down rules by which partitions of this kind can most conveniently be carried out and we think that a Civil Court in effecting a partition" can take no better guide than the rules laid down in that law, as far as they are applicable to the property sought to be partitioned."

6. We think in this case, under the circumstances proved by the evidence, that the lower appellate Court was justified in applying the principles o& Section 65 of the Estates Partition Act and we do not think there is any reason to interfere with the decree of the lower appellate Court.

7. The appeal is, therefore, dismissed with costs.