

(1909) 11 CAL CK 0029

Calcutta High Court

Case No: None

Girwardhary Singh

APPELLANT

Vs

Bachu Singh and Others

RESPONDENT

Date of Decision: Nov. 23, 1909

Judgement

1. The question that arises in this second appeal is whether a Civil Court has jurisdiction to set aside a partition made by the Revenue authorities on the ground of a defect in, or erroneous exercise of, jurisdiction without any issue of fraud or wrongful loss caused to the parties by reason of such error. The following synopsis will show the course the case took in the Revenue Courts. On the 16th August 1900, an application was made for partition of the estate and on the 13th January 1901, a partition was ordered to be made. Early in 1902, the raibundi was approved and in April of that year the proprietors came, in u/s 51 of the Bengal Estates Partition Act (1897) and applied to have the partition made by arbitrators three of whom were named.

2. It appears that the Collector nominated only two of these persons in his order of reference dated the 30th April 1902, but all three acted as arbitrators and it is conceded before us that no question of jurisdiction now, arises upon this point. On the 31st January 1903, the arbitrators submitted their award and the Deputy Collector remitted it to them on the 11th July 1903 for a general re-consideration of the takhtabandi.

3. The arbitrators refused to re-consider their award and the Deputy Collector then proceeded to effect the partition himself as if he was acting under Chapter VIII of the Act. His report was completed and submitted to the Collector on the 23rd December 1903, on which date the Collector issued notice to the parties and after hearing them and reading all the papers, he held that the Deputy Collector was not justified in withdrawing the case from the arbitrators and making the partition himself. He should have at once submitted the completed partition contained in the award to the Collector for approval u/s 55 of the Act and the Collector would have

handed it on to the Commissioner for confirmation unless he saw sufficient reason for disallowing it on either of the grounds mentioned in Section 55. He accordingly approved the partition made by the arbitrators u/s 55 and forwarded the papers to the Commissioner for confirmation under that section.

4. It is contended that by reason of Section 52 of the Act, the provisions of Sections 520 and 521 of the CPC apply to the award in this case and that on the refusal of the arbitrators to re-consider it, the award became void and the Collector had no jurisdiction to take cognisance of, far less to restore it.

5. Now apart from the question whether Sections 520 and 521 have any application to this case and assuming but not admitting that the Collector exercised his jurisdiction improperly it appears to us extremely doubtful whether having regard to the provisions of Section 119 of the Estates Partition Act his order was liable to be contested in the Civil Court. We have been referred to the ruling of the Judicial Committee in *Secretary of State for India in Council v. Fahamidannissa Begum* 17 C. 590 (P.C.) : 17 I.A. 40, and to the numerous cases where Collectors have executed certificates where no arrears of revenue were due or without notice u/s 10. But these are all cases where the Revenue authorities have, as pointed out by their Lordships of the Judicial Committee, in violation of the rights secured to the owner of a permanently settled estate, claimed to subject his land to an additional assessment, which is wholly illegal and invalid." He can, therefore, appeal by suit, as a matter of right, to have immediate redress for violation and encroachment on his secured rights. The principle applies whether the encroachment is on the alleged ground of alluvion or of revenue alleged to be in arrears, which is not in arrears, or on a decree by certificate which is no decree by reason of non-service of the statutory notice.

6. It would not seem to apply to a proceeding like a partition where the Revenue authorities have an inherent jurisdiction to make the partition and where no wrongful loss is pleaded in consequence of their action.

7. The only case where a final decision of a Court can be set aside merely on the ground of want of jurisdiction is when the Judge has no inherent jurisdiction over the subject-matter of the suit. Irregularities in the exercise of its jurisdiction by a competent Court must be made the subject of objection at the time, and the defendant cannot subsequently dispute the jurisdiction of the Court--vide the well-known case of *Ledgard v. Bull* 9 A. 191 : 13 I.A. 134. But this is really an academical question inasmuch as in this case we find there was no defect of jurisdiction in the Collector. The order remitting the award to the arbitrators was not in accordance with Section 520 of the CPC and it was not, therefore, remitted under that section.

8. The provisions of Section 521, therefore, do not apply and the award has not voided under that section by the refusal of the arbitrators to re-consider it. Reading

Section 55 with Section 57 of the Act, we find that the Deputy Collector had no power to remit the award and no jurisdiction to make the partition himself under Chapter VIII. The Collector rightly treated the order of remittal as a nullity and proceeded to deal with the award u/s 55 which is the only section of the Act under which an award can be dealt with. He went fully into the grounds of objection to the award as far as they fall within the scope of the section and upheld the award, which was not open to revision on the basis of the takhtabandi, with which the arbitrators had no power to deal. The fact that the Deputy Collector took unnecessary and illegal intermediate steps in connection with the award cannot affect the jurisdiction of the Collector. They merely second as the Collector points out to cause unnecessary delay. The fact that the Commissioner held that the award was contrary to law as stated in the plaint (for his order has not been laid before us) would not affect the case inasmuch as he upheld the partition as made by the arbitrators as being a fair one. Lastly, we come to Section 58 of the Act which, assuming that the award was void and the partition was really made by the Deputy Collector, enables the Collector to approve the partition with or without amendments or to make a new partition or to remand the case to the Deputy Collector. The effect of this is that even if the Collector's view of the Deputy Collector's proceedings was erroneous, which we think it was not, the error on the face of the proceedings would be merely one of form, and no consequential wrongful loss being alleged, no suit would lie to set aside a partition which the Collector was empowered to make himself apart altogether from the award of the arbitrators.

9. For all these reasons the appeal fails and must be dismissed with costs.