
(1881) 04 CAL CK 0017

Calcutta High Court

Case No: None

Chundernath Nundi

APPELLANT

Vs

Hur Narain Deb

RESPONDENT

Date of Decision: April 13, 1881

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 11

Citation: (1881) ILR (Cal) 153

Hon'ble Judges: Tottenham, J; Morris, J

Bench: Division Bench

Judgement

Tottenham, J.

It appears to me that the reasons given by the lower Courts for entirely dismissing the plaintiff's suit are not sound in law. It may be that, as observed by the District Judge, the power to make partition of lands paying revenue to Government (that is, as between persons by whom the revenue is payable) is restricted to the Collector; but that restriction does not exclude the Civil Court from determining the right of one of such persons to have his share divided, and from making a decree accordingly, in a suit in which the plaintiff does not seek to have his joint liability for the whole of the Government revenue annulled. In the present case Mr. Belf or the appellant has expressly deprecated any partition of the Government revenue, and points to the sixth paragraph of the plaint as showing that plaintiff never intended to demand it.

2. There can be no doubt that a right to partition is inherent in owners of joint property; and Section 11 of the CPC provides that the Courts shall, subject to certain provisions, which do not apply to the present case, have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

3. Thus it appears to me impossible to say, that the present suit will not lie in the Civil Court, and the fact noticed by the lower Courts that the plaintiff's share in the estate exists only in a portion of it, and not in all the lands comprised in it, seems to me to afford no reason why he should be barred from obtaining a partition of his share such as it is. The Court might hesitate to allow him a decree for the severance of a portion only of his share, or of his proportionate shares of particular plots; but if he claims to have his whole share divided, as Mr. Bell states that he does, and disclaims any share in lands not included in this suit, I see no reason why he should not obtain what he claims: and it appears from the written statement of the defendant that he has no real objection to a partition of the plaintiff's just share. As to certain partitions of the lands of which a share is claimed, the Courts have found as a fact, that the plaintiff has no right in them. This will not prevent his obtaining his share of what does really belong to him.

4. As to the alleged misjoinder and nonjoinder of proper parties, the suit cannot fail on that account. If the lower Appellate Court thinks it necessary that other parties be joined in the suit, it is open to it to so order.

5. The decree of the lower Court must be set aside with costs, and the case must go back for a fresh trial with reference to the observations above made.

Morris, J.

I understand the plaintiff to be a fractional shareholder of a revenue-paying estate called Chota Hissa, No. 24, and to possess an interest in only one village, by name Kharki, of this estate. The lands of this village, so far as they appertain to this estate, are held in joint tenancy by the plaintiff and the defendant in the proportion of twelve annas and four annas respectively, under a certain deed of solehnamah.

2. By the present suit the plaintiff asks the Court to direct partition by metes and bounds of the lands constituting his twelve annas share. To this two objections are raised: first, that the plaintiff has not asked for the partition of all the lands which formed the subject of the solehnamah; and second, that, on the principle laid down in the case of Ruttonmonee Dutt v. Brojomohun Dutt (22 W. R., Act X Rul., 333), the Civil Court cannot direct the partition of a block or small quantity of revenue-paying land of a joint estate. On the first point, however, it is clear that the plaintiff disclaims possession or ownership of the plots referred to, and only asks for partition of those lands which are held by him jointly with the defendant. In connection with this estate he denies that he is in possession of any other lands.

3. This being so, his case appears to come entirely within the provisions of Section 265 of the Civil Procedure Code, and the second objection fails. The plaintiff, by this suit, substantially asks for the partition of his entire share in this undivided estate. I agree, therefore, in thinking that the Civil Court has jurisdiction to give him the relief he seeks, and, setting aside the order of the District Judge, direct that the case be returned to him to be dealt with on the merits. Appellant is entitled to the costs of

this appeal.