

(1878) 02 CAL CK 0011

Calcutta High Court

Case No: None

Rajcoomaree Dassee

APPELLANT

Vs

Gopal Chunder Bose
and Others

RESPONDENT

Date of Decision: Feb. 18, 1878

Citation: (1878) ILR (Cal) 515

Hon'ble Judges: White, J; Mitter, J

Bench: Division Bench

Judgement

White, J.

Several objections have been taken by the appellant to the partition which was made by the Ameen in this case, and upon which the orders of the two lower Courts have proceeded. To none of them do I think that this Court can yield in special appeal, except that which complains that certain property has not been divided as directed by the decree. The property which has been thus dealt with by the lower Courts consists of a poojah dalan, certain rooms on either side of it, a courtyard adjoining the dalan, and the western wall of the courtyard, This property has not been divided, but ordered by the Courts below to remain joint.

2. I think that, having regard to the form of the decree, it was not open to the Court in executing that decree to order that any part of the property should remain joint unless it was with the consent of all the co-parceners who were parties to the suit. It appears that in this case two of the co-parceners did consent to this portion of the property remaining unpartitioned, but one of them, who is the appellant before us, objected to its remaining joint. This portion of the property is in its nature divisible, and no authority has been cited to show that it is undivisible by reason of the uses to which it is put. We must, therefore, set aside that part of the order of the lower Courts which declares that the property in question shall remain joint. Considering, however, the nature of the property and the "fact that some of the co-parceners desire that it should continue undivided and be used as heretofore in its present

condition, we are not prepared to direct that it should be divided amongst the three coparceners in proportion to their shares, without giving the co-parcener or coparceners who may wish to keep it on tire an opportunity of doing so, if he or they can agree on the subject with the other co-parceners. The order, therefore, which we shall make in the present case is the following: Let the poojah dalan, the rooms on either side of it, the courtyard attached thereto, and the western wall of that courtyard, being the property left undivided by the order of the lower Court appealed against, be valued, and if any one or two of the co-parceners wish to retain the same separately or jointly as part of his or their share, let the proportionate share of its value be paid to the remaining co-parcener or co-parceners who do not wish to retain the same. If none of the, three co-parceners agree to take the same as part or parts of their share or shares, paying to the other or others of them a proportionate share of its value, or if the three co-parceners cannot agree amongst themselves as to which of them shall be allowed to take the same as part of his or their share or shares, then let this property be divided between the three co-parceners in proportion to their respective shares in the same. This will give to the two co-parceners who wish to keep it undivided an opportunity of doing so by paying a six-anna share of the value to the appellant, Rajcoomaree.

3. Each party will bear his own costs in this Court.

Mitter, J.

4. I concur in this order. But I desire to add that I would put it, not upon the ground that the lower Courts are precluded by the decree from dealing with this property in the mode in which they have done, but upon the ground that the order which we have passed is more equitable.