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Calcutta High Court

Case No: Special Appeal No. 3291 of 1868

Bindubasini Debi	APPELLANT
Vs	
Patit Paban Chattapadhya and Others	RESPONDENT

Date of Decision: June 28, 1869

Judgement

L.S. Jackson, J.
It seems to me quite clear, that, under the circumstances of this case, the Subordinate Judge was right in refusing to allow the demolition of the buildings in question. I am at a loss to understand on what principle the Munsiff thought himself entitled to make the order which the plaintiff asked for. The defendants were two-third owners, that is to say, were entitled to an undivided two-thirds share of the property in dispute, the plaintiff being entitled to the remaining one-third. The defendants purchased from the co-sharers of the plaintiff, and appear to have had it represented to them that what they were purchasing was the whole of the property. It seems that, at some time or another, they got notice of the plaintiff"s right, but refused to recognise her, and proceeded to erect these buildings. It seems to me, that the plaintiff would be entitled to get possession of a divided one-third share if she chose; and whenever she thinks fit to bring a suit for that purpose, the Court where it is tried will have to consider what is necessary to be done in order to give her possession of that one-third share; but to say that she, as one of three joint owners, could compel the other two to adopt her views of the mode in which they should jointly enjoy the property, or that the Court could give her assistance in so doing, appears to me out of the question. The decision of the lower appellate Court is right, and must be affirmed with costs.

Markby, J., J.

I also think the decision is right. The Court has power when giving the plaintiff a decree for possession of land in some cases to restrict him in the exercise of his ordinary rights as owner; but I know of no law which enables him to order that the plaintiff should exceed

those rights. On the other hand if the plaintiff has a right as joint owner to have those buildings removed she may exercise it. But whether she has or has not is not a question in this suit, all she is entitled to is a decree for possession in the usual form.

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(1) Case No. 108 of 1865 : September 12th, 1866 (B.L.R. Sup. 595 : 6 W.R. 228)