

CIVIL RULE.

Before Panton and Mallik JJ.

MIDNAPORE ZEMINDARY CO., LTD.

1927

Feb. 25.

v.

NARESH NARAIN ROY.*

Appeal—Revision—Proper remedy against an order passed under Order XXII, rule 10 of the Code of Civil Procedure—Civil Procedure Code (Act V of 1908), Order XXII, rule 10, Order XLIII, rule (1), clause (1) and s. 115.

Where there is a devolution of interest during the pendency of a suit and the Court orders addition of such parties in the suit, it is an order passed under Order XXII, rule 10 of the Code of Civil Procedure and the proper remedy of a party who is dissatisfied with such an order lies in preferring an appeal under Order XLIII, rule (1), clause (1) of the Code and not by invoking the aid of section 115 of the Code.

CIVIL RULES obtained by one of the defendants.

Kumar Naresh Narain Roy instituted a suit for partition against the Midnapore Zemindary Co., Ltd., Rani Hemanta Kumari Debi and the Secretary of State for India in Council. The first-named of the defendants urged the plea that the suit was bad for non-joinder of parties. The plea was overruled by the trial judge at the hearing of the suit. The suit was eventually fought up to the Privy Council, where the plaintiff obtained a preliminary decree for partition. Thereafter, there was a compromise between the plaintiff and the aforesaid company-defendants, but it was

* Civil Rules Nos. 718 and 719 of 1926, against the order of A. K. D. Gupta, Subordinate Judge of Nadia, dated April 30, 1926.

agreed between them that partition by metes and bounds would be effected through Court. A pleader was appointed commissioner for partition. In the partition-proceeding, Dayadra Nath Bhowmik and Nagendranath Bhowmik and certain Chowdhuries made applications to be added as parties on the ground that they had obtained decrees for joint possession in two of the properties in dispute. These applications were granted by the Subordinate Judge. The Midnapore Zemindary Co., Ltd., thereupon, moved the High Court and obtained these two Rules in respect of the two properties, making the plaintiff, the Bhowmiks and the Chowdhuries opposite parties.

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Mr. Narendra Kumar Basu (with him *Babu Pasupati Ghosh*), for the Chowdhuries, opposite party, in Rule No. 1719. I have a preliminary objection to the hearing of the Rules. The order complained of is an order adding my clients as parties, because by a decree of Court the interests of the Midnapore Zemindary Co. have been declared to have devolved upon my clients. The order is, therefore, one under Order XXII, rule 10 and an appeal lies under Order XLIII, rule (1), clause (1).

Babu Prabodh Kumar Das (with him *Babu Jogesh Chandra Bose*), for the petitioners. The order is one under Order I, rule 10 (2), C. P. C., and is not appealable.

On the merits, the Subordinate Judge had no jurisdiction to add parties after the Privy Council decision. The effect of his doing so is to complicate the matter under trial. The partition to be effected is that of lands of *touzis* Nos. 814 and 3514, and neither the Chowdhuries nor the Bhowmiks have anything to do with the said *touzis*.

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Mr. Narendra Kumar Basu, in reply. The Subordinate Judge finds that the lands of 4 *touzis*, Nos. 814, 815, 3514 and 3587 are identical. There cannot be any effectual partition till my clients have their lands demarcated and separated. They have stepped into the shoes of the petitioners, who in an earlier stage themselves applied to make my clients parties. There is no question of partition and the matter cannot be revised under section 115 C. P. C.

Babu Bireswar Bagchi, for the plaintiff, opposite party, adopted the arguments of Mr. Basu and read plaint in the partition suit and written statement of the petitioners. The suit was for partition of several *touzis* mentioned in the plaint. The Midnapore Zemindary Co. took the objection that the Chowdhuries and Bhowmiks were necessary parties, but as their interest was then vested in the said company, the Subordinate Judge held that they were not necessary parties. That interest has now devolved on the Chowdhuries and Bhowmiks during the pendency of the suit and they have applied to be added as parties. This order allowing addition of parties is appealable. Even if section 115 C. P. C. applies, the order being interlocutory and just and there being no question of jurisdiction, the High Court should not interfere. Moreover, the company is not prejudiced in any way.

Babu Rabindranath Chowdhury, for the Bhowmiks, opposite party, adopted the arguments of Mr. Basu and Babu Bireswar Bagchi.

Babu Birajmohan Majumdar, for the Deputy Registrar, on behalf of some of the minor Chowdhuries.

Cur. adv. vult.

MALLIK J. These two Rules are directed against two orders, dated the 30th April, 1926, of the Subordinate Judge of Nadia, by which certain persons,

Bhowmiks and Chowdhuries, were added as party-defendants in suit. It appears that as early as 1912, one Kumar Naresh Narain Roy instituted a suit numbered 557 of 1912 for partition of his 5-annas odd share in three *mehal*, Mehal No. 814 (with which was incorporated Mehal No. 3514), Mehal No. 815 and Mehal No. 3587 and it appears also that, at the time when the suit was instituted, the Midnapore Zemindary Company were, besides the plaintiff, the only other proprietors in Mehals Nos. 815 and 3587. This partition suit was fought up to the Privy Council and the plaintiff ultimately obtained a preliminary decree for partition. After the preliminary decree, but before the final decree in the partition suit was made, the Bhowmiks and the Chowdhuries acquired the interest which the Midnapore Zemindary Company had in Mehals Nos. 815 and 3587 and they applied before the learned Subordinate Judge to be added as party defendants. Their applications were granted and the learned Subordinate Judge made the orders which are complained of now and against which the present Rules were obtained.

A preliminary objection was taken before us on behalf of the opposite party that the petitions of the Midnapore Zemindary Company are incompetent. This objection in our opinion is well founded. From what I have stated above, it would appear that the Bhowmiks and the Chowdhuries have acquired a certain interest which the Midnapore Zemindary Company had in Mehals Nos. 815 and 3587 (which also formed the subject matters of the partition suit) and this interest the Bhowmiks and the Chowdhuries acquired after the preliminary decree for partition had been made but before any final decree was passed. That being so, the case was clearly one of devolution of an interest during the

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pendency of a suit and the orders which the learned Subordinate Judge made on the 30th April, 1926 were orders under Order XXII, rule 10 of the Code of Civil Procedure. If the Midnapore Zamindary Company had any cause to be dissatisfied with those orders, their remedy lay in preferring an appeal under Order XLIII, rule (1), clause (l) and not by invoking, as they have done, the aid of section 115 of the Code.

On the merits also the petitions of the Midnapore Zemindary Company do not stand on any better footing. The suit was for partition of the plaintiff's share in three *mehals*. It is undisputed that the lands in all these *mehals* are identical and it could not be denied that the Bhowmiks and the Chowdhuries had acquired certain interest in two of these *mehals* which at one time belonged to the Midnapore Zemindary Company. These being the circumstances, the preliminary decree for partition could not, in our opinion, be given effect to unless the Bhowmiks and the Chowdhuries were brought in as parties. It was said that the inclusion of the Bhowmiks and the Chowdhuries at such a late stage of the case would be prejudicial to the Midnapore Zemindary Company. But it is to be observed that the interest which the Bhowmiks and the Chowdhuries have acquired in the two *mehals* was no other than the interest which the Zemindary Company themselves had in them. It is to be noted also that the Midnapore Zemindary Company at an earlier stage of the litigation had, though unsuccessfully, themselves applied to have the Bhowmiks and the Chowdhuries added as party defendants in the case. In the circumstances, we are unable to hold that the learned Subordinate Judge, when he made those orders, on the 30th April, 1926, did anything that would justify us in interfering with them in the exercise of our revisional powers.

Both the rules are, accordingly, discharged with costs, hearing-fee. five gold mohurs in each case, to be divided equally amongst the different sets of opposite parties who appeared.

PANTON J. I agree.

S. M.

Rules discharged.

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CIVIL REFERENCE.

Before Panton and Mallik JJ.

EMPEROR.

v.

SATISH CHANDRA SINGHA.*

1927
March 1

Legal Practitioner—Misconduct—Proceedings under the Legal Practitioners Act, when and if to be taken, if charge amounts to a criminal offence—Proper mode of recording evidence in such case—Evidence, what is proper—Legal Practitioners Act (XVIII of 1879), s. 14.

In a case where what was alleged against a pleader amounts to a charge of aiding and abetting or conspiring to commit a criminal offence, the correct procedure to be followed is that proceedings under the Legal Practitioners Act should not be taken out, but that, if it was thought necessary to take action, it should be by way of a criminal prosecution.

In the matter of Rajendra Kumar Dutta and Abdul Khaleque (1) relied on.

There is nothing illegal in recording evidence before framing a charge against the pleader, but the adjudication in a charge under s. 14 can only be on evidence taken in the presence of the person charged.

A charge cannot be said to be established merely on the unsupported testimony of an accomplice.

* Civil Reference No. 7 of 1926, under section 14 of the Legal Practitioners Act (XVIII of 1879).