

APPELLATE CIVIL.*Before Page and Graham JJ.***MATANGINI GHOSE***v.***MANMOHINI GHOSE*.**1927*July 5.*

*Partition—Estates Partition Act (VIII of 1876, now V of 1897), s. 149
now s. 119 of Act V of 1897, construction of.*

It was neither intended nor enacted by the Estates Partition Act that the Revenue Officer who carried out the partition should concern himself with, or affect to decide, disputed questions of title to the land under partition. That is a function more fittingly performed by a Court of Law ; the principal duty of the Revenue Officer in effecting the partition being to provide that the security for the payment of revenue should be safeguarded.

The Legislature in enacting section 149 of the Act of 1876 intended to prohibit any attempt that otherwise might have been made by way of litigation to reargue such vexed question as whether the partition as made or the proportionate revenue imposed upon any separate estate, was correct or fair.

Ananda Kishore Chowdhry v. Daije Thakurain (1) and other cases referred to.

MISCELLANEOUS APPEAL by Sreemati Matangini Ghose and another, the defendants.

This miscellaneous appeal arose out of a suit for establishment of the plaintiffs' title to certain shares of the parent estate No. 397 in the Dacca Collectorate on the basis of a partition effected by the Collector

*Appeal from Appellate Order, No. 225 of 1926, against the order of Upendra Nath Biswas, Subordinate Judge of Dacca, dated March 15, 1926, reversing the order of J. P. Banerjee, Munsif, Narainganj, dated April 30, 1925.

of Dacca. The trial Court dismissed the suit on the ground that it was not maintainable, but it was reversed by the lower Appellate Court.

Babu Tarakeswar Pal Chowdhury and *Babu Prakash Chandra Pakrashi*, for the appellants.

Babu Rajendra Chandra Guha and *Babu Kiran Mohan Sarkar*, for the respondents.

PAGE J. This appeal depends upon the true construction of section 149 of the Estates Partition Act (VIII of 1876), now section 119 of Act V of 1897. Section 149 runs as follows :—

No order of a Revenue Officer (d) made under Part IV, Part V, Part VI, Part VII, Part VIII (except as provided in the next succeeding section) or Part IX.

shall be liable to be contested or set aside by a suit in any Court or in any manner other than as is expressly provided in this Act.

The material facts for the purposes of this appeal are few and simple. An application for partition of a parent estate No. 397 in the Dacca Collectorate was preferred under the Act of 1876 by the registered proprietors. The partition was duly effected on 26th August, 1912, and the appellants as recorded proprietors were put into possession of *sahams* No. 15356 and No. 15340 which had been carved out of the parent estate, and had been allotted to them respectively. Many years after the partition proceedings had been completed the respondents filed the present suit No. 260 of 1924, in which they claimed a declaration that they were entitled to an 8 gandas share in *kharija taluki* right in mouza Jhougara, part of the parent estate No. 397, and that after partition they were entitled in *kharija taluki* right to a three annas 15 gandas share in *saham* No. 15356 and to a 3 annas 17 gandas share in *saham* No. 15340. They

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also claimed a decree for possession of their said shares, and incidental relief.

The trial Court dismissed the suit upon the ground that it was not maintainable by reason of section 149 of the Estates Partition Act of 1876. The lower Appellate Court reversed the decree of the trial Court, holding that the suit was maintainable, and remitted the case to the trial Court to be heard and determined on the merits. The question that falls for determination is whether or not in the suit as framed an order of a Revenue Officer within section 149 (*d*) is "liable to be contested or set aside".

Now, the scheme of the Estates Partition Act, as I apprehend that enactment, is to enable the co-sharers of an estate, each of whom jointly and severally are liable for the revenue to which it is assessed, to obtain a partition of the parent estate into two or more separate estates in such a form that on the one hand the payment of the revenue secured upon the property should not be jeopardised, and on the other hand that the several co-sharers should be liable to pay only that portion of the revenue imposed upon the parent estate which had been charged upon the separate estates which respectively are allotted to them. But as I read the Act, it was neither intended nor enacted that the Revenue Officer who carried out the partition should concern himself with, or affect to decide, disputed questions of title to the land under partition. That is a function more fittingly performed by a Court of law; the principal duty of the Revenue Officer in effecting the partition being to provide that the security for the payment of revenue should be safeguarded. A perusal of the Act discloses that the Revenue Officer is to have regard to the claims of the recorded proprietors of the estate. It is only a recorded proprietor who is entitled to claim a partition

under the Act, and it is the recorded proprietors whose names are to appear in "the paper of partition". (section 77). In my opinion, the object of the Legislature in enacting section 149 was to prohibit any attempt that otherwise might have been made by way of litigation to reagitate such vexed questions as whether the partition as made, or the proportionate revenue imposed upon any separate estate, was correct or fair: see in this connection, *Ananda Kishore Chowdhry v. Daiji Thakurain* (1), *Janaki Nath Chowdhry v. Kali Narain Roy Chowdhry* (2), *Lakhi Choudhry v. Aklon Jha* (3), *Anil Kumar Biswas v. Rash Mohan Saha* (4). Having regard to the elaborate machinery that had been set up for carrying out the partition it is, I think, clear that the Legislature intended that such matters should not be reopened except as provided in the Act. But, in my opinion, the Legislature by enacting section 149 did not intend or provide that a person who claimed an interest in the land which was the subject of a partition should be deprived of the right to have the validity of his claim decided by a Court of Law; although no doubt, in certain circumstances the final decree in the title suit would be subject to the partition that was or would be made, and must be framed "in such manner as to give effect" to the partition. See for example sections 24 to 28 (to which section 149 is not applicable), section 116 and section 150. In the present suit the respondents do not seek either to contest or disturb the partition as made, nor do they question in any way the *quota* of the revenue payable by any of the separate estates into which the parent estate has been divided. Indeed, if the respondents

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(1) (1909) I. L. R. 36 Calc. 726.

(3) (1911) 16 C. W. N. 639.

(2) 1910) I. L. R. 37 Calc. 652.

(4) (1923) 28 C. W. N. 46.

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succeed in establishing their claim to a share in the *sahams*, the result will be that the ultimate liability of the recorded proprietors to pay revenue will *pro tanto* be diminished, while the payment of revenue will be further secured by reason of the added liability of the respondents to pay the revenue due.

For these reasons, in my opinion, the claim in the present suit is not barred by section 149 of the Act of 1876, and the appeal must be dismissed with costs.

GRAHAM J. I agree.

B. M. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Page and Graham JJ.

CHANDRA KISHORE CHAKRAVARTY

v.

BISESWAR PAL.*

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*Co-sharers—Joint possession—Compensation for occupation of excess land—
 Account—Partition—Exclusion and ouster, meaning of.*

Where co-sharers are entitled to joint possession of immovable property as tenants-in-common each of such co-sharers is entitled to be in possession of each and every part of the common land. But for the purpose of the profitable occupation of the joint property it usually happens that some of the co-sharers are found to be in occupation of some portions of the land, and other co-sharers of other portions; and where one co-sharer is in separate possession of the common land without objection from, or ouster or exclusion of, the other co-sharers, he is under no obligation either to account or to pay compensation to such co-sharers in

* Appeal from Appellate Decree, No. 489 of 1925, against the decree of S. N. Guha, Additional District Judge of Dacca, dated Nov. 7, 1924, reversing the decree of Maulvi Abdul Khaleque, Subordinate Judge of Dacca, dated Jan. 25, 1923.