

## APPELLATE CIVIL.

Before Rankin C. J. and C. C. Ghose J.

ABDUL RAZAK

v.

SHREENATH GHOSH.\*

1930

March 7.

*Partition—Partition of revenue-paying estate—Undivided estate—“ For separate possession of a share of such estate,” meaning of—Jurisdiction of civil court—Code of Civil Procedure (Act V of 1908), s. 54 ; O. XX, r. 20.*

Section 54, Code of Civil Procedure, speaks of a decree for partition and it deals with a decree for partition if that decree is for the partition of an undivided estate assessed to the payment of revenue or for the separate possession of a share of such an estate. It says that in those cases the partition of the estate or the separation of a share shall be made by the Collector.

Whether a party has asked for partition of the revenue or not, if he has a right to the partition of an undivided estate, his right is to a complete partition and it is the right of any other party to object to an incomplete partition, which would leave his interest at the mercy of the plaintiff, if he makes default in paying his share of the revenue.

In the same way, the words “ for the separate possession of a share of such an estate ” contemplate the case of a man whose right is to the possession of an aliquot portion or share of the whole undivided estate considered as one.

*Debi Singh v. Sheo Lal Singh* (1) and *Jogolishury Deba v. Kailash Chandra Lahiry* (2) discussed.

SECOND APPEAL by the plaintiff.

The facts of the case, out of which this appeal arose, appear fully in the judgment.

*Manmathanath Das Gupta* (for *Bankimchandra Banerji*) for the appellant.

*Radhabinode Pal* and *Premranjan Ray Chaudhuri* for the respondent.

RANKIN C. J. In this case, the defendants Nos. 1 and 2 have each 8 annas interest in a revenue-paying estate and the defendant No. 2 has granted

\*Appeal from Appellate Decree, No. 66\* of 1928, against the decree of H. G. Waight, Additional District Judge of Dacca, dated Aug. 27, 1927, reversing the decree of Natabihari Ghosh, Subordinate Judge of Dacca, dated Dec. 13, 1926.

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(2) (1897) I. L. R. 24 Calc. 725.

to the plaintiff a *patni* lease of his undivided half-share in this revenue-paying estate. Thereupon, on the 14th July, 1926, the plaintiff brought a suit for partition against both the defendants. The defendant No. 1, by his written statement, took the point that the partition should not be done by a commissioner in the civil court, because the civil court, in that way, could not sever the total revenue demand upon the estate as a whole. He pointed out that, if the plaintiff got separate possession of certain lands—the revenue remaining a burden upon the whole of the lands—and if the plaintiff made default in paying his share of the revenue, the lands which had been given in severalty to the defendant No. 1 would be liable to be sold for default of revenue. At the same time and on the same day, namely, the 31st August, 1926, on which he filed the written statement, the defendant No. 1 tendered a petition to the Collector under the Estates Partition Act asking for a complete or perfect partition of the estate—both as regards land and as regards revenue. On the 13th December, 1926, the Subordinate Judge gave a preliminary decree for partition in the ordinary form. It was not a decree of the character contemplated by section 54, Code of Civil Procedure, or referred to in Order XX, rule 18. Thereupon, a final decree was passed on the 20th June, 1927. But, in the meantime, an appeal had been taken from the preliminary decree to the learned District Judge and the learned District Judge has directed that, in this case, a partition be made under Order XX, rule 18 and by the Collector under the powers specified in section 54, Code of Civil Procedure.

Now, it is quite clear that the plaintiff did not ask for a division of the revenue and, for anything I know, it is sound law to say that a *patnidār* could not, as such, ask the Collector for a separate division of revenue. But, on that, I express no opinion. The fact is that, in his written statement and by his conduct, the defendant No. 1, from the beginning, said that, if there was to be a partition and if the plaintiff

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turned out to have the title which he claimed, a perfect partition severing the revenue as well as the land was the proper thing to do. It seems to me that the language of section 54, Code of Civil Procedure, if it is really attended to, is not very perplexing. The section is speaking of a decree for partition and it deals with a decree for partition if that decree is for the partition of an undivided estate assessed to the payment of revenue or for the separate possession of a share of such an estate. It says that in those cases the partition of the estate or the separation of a share shall be made by the Collector.

Now, when I come to consider the two cases to which we have been referred and in which a good deal of discussion—mostly irrelevant discussion—appears to have taken place as to the meaning of this section as it appeared as section 265 of the Code of 1882, I find on the threshold of each case that it is apparent that the decree in that case was not and could not have been either for the partition of an undivided estate or for the separation of a share of such an estate. In *Debi Singh v. Sheo Lall Singh* (1), the suit was for the partition of a certain *mouzá*; it was not for the partition of a revenue-paying estate at all. It so happened that the *mouzá* was part of a revenue-paying estate as most *mouzá*s are. The plaintiff claimed to have a certain share in proprietary right in that *mouzá* and a certain share further as *mokarraridâr* under the defendant and the only comment that need be made upon that case is that, whereas section 54 is to be applied to one class of case, the ordinary law is to be applied to the other case. This case was nowhere within the scope of section 54, because it had nothing directly to do with the partition of a revenue-paying estate—either partitioning it among all the proprietors or separating out the interest of a person who had an one-fifth or one-tenth share in the revenue-paying estate as such and considered as one. In the Full Bench case of

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*Jogodishury Debea v. Kailash Chundra Lahiry* (1) to which we have been referred, the position was the same. Section 265, Code of Civil Procedure, had nothing to do with the case. The suit was for the partition of the lands of 8 *mouzás*, in which the plaintiff and the defendants were jointly interested. There were other *mouzás* in the revenue-paying estate and the suit had no reference to them. The proprietors of the other *mouzás* were not parties to the suit. The object of the suit was not to have the parent estate, as it was called, divided into several separate estates, but to have the lands of these eight particular *mouzás* divided among certain persons who were jointly interested in them. Now, unfortunately, by reason of some irrelevance or other, this case was supposed to raise a question under section 265 and a good deal of judicial comment was made upon section 265 (which seems to me to have been entirely unjustified by the words of the section) in order to show that the case in hand was not within section 265. It is perfectly clear that the case was not within miles of section 265. The learned Chief Justice dealt with the matter by saying that "the present suit is "not 'for the partition or for the separate possession " 'of a share of an undivided estate paying revenue " 'to Government.' " Be that as it was, the learned Chief Justice said that he approved and followed the decision in the case of *Debi Singh v. Sheo Lall Singh* (2)—a decision which was quite in point, but in the course of which various observations had been made as to the meaning of section 265, which were entirely unnecessary for the decision.

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Mr. Justice Macpherson said: "The decree "referred to in section 265 of the Civil Procedure "Code is, I think, a decree either for the partition "of an undivided revenue-paying estate into several "separate revenue-paying estates, or for separate "possession of a share of an undivided revenue-paying "estate to be held as a separate estate—a decree, that "is to say, which directs a distribution of the revenue

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(2) (1889) I. L. R. 16 Calc. 203.

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“as well as a division of the land wholly or in part;” and Mr. Justice Banerjee gave reasons for the same view. Now, Mr. Justice Trevelyan took the view that the “section applies only to a case where the “decree comprehends the partition of the whole of an “estate paying revenue to Government. A decree for “possession of a share of a portion of an undivided “estate is not a decree for ‘possession of a share of an “ ‘undivided estate’ in any sense.” He said “It has “been argued that the section only applies in a case “where the plaintiff asks, and the decree provides, “for the partition of the revenue. It is, in my “opinion, unnecessary to decide that point; but were “it necessary to decide it, I would say that there is “nothing in the section which so limits its operation.” Mr. Justice O’Kinealy concurred with Mr. Justice Trevelyan. On that, I desire to observe that so do I. If a decree is for the partition of an undivided estate assessed to the payment of revenue to Government, then it seems to me that, by section 54, the partition is to be carried out by the Collector. It is idle to say that it is open to the plaintiff to insist that it be carried out by a commissioner under the civil court, merely because he has not asked for partition of the revenue. Whether he has asked for partition of the revenue or not, if he has a right to the partition of an undivided estate, his right is to a complete partition and it is certainly the right of any other party to object to an incomplete partition which would leave his interest at the mercy of the plaintiff, if the plaintiff makes default in paying his share. In the same way, the words “for the separate “possession of a share of such an estate” contemplate the case of a man whose right is to the possession of an aliquot portion or share of the whole undivided estate considered as one and, in that case too, it appears to me that the intention of the statute is that in all cases such partition should be done by the Collector—the reason being, first of all, that it is the right of each party to have a complete partition, if he is to have a partition at all; and, secondly, that there

is the interest of the Government to be considered—it being the duty of the Collector to see that the proper share of the revenue is in every case put upon the particular land or share of land. So far as the two cases, to which I have referred, are concerned, I am of opinion that they were both rightly decided. I am of opinion that the *dicta* in those cases are irrelevant—I mean the *dicta* to which I have referred as attempting to cut down the language of section 54 by importing qualifications which are not to be found in the section. In my judgment, the opinion expressed by Mr. Justice Trevelyan and Mr. Justice O’Kinealy in the case of *Jogodishury Debea v. Kailash Chandra Lahiry* (1) is correct and, in any view, in this case, the learned District Judge has decided the appeal before him rightly. The appeal should be dismissed with costs—hearing-fee two gold mohurs.

C. C. GHOSE J. I agree.

*Appeal dismissed.*

G. S.

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