

Before Mr. Justice Morris and Mr. Justice Tottenham.

CHUNDERNATH NUNDI (PLAINTIFF) v. HUR NARAIN DEB
(DEFENDANT).*

1881
April 13.

Partition—Butwara—Revenue-paying Estate—Jurisdiction—Civil Procedure Code (Act X of 1877), ss. 11, 265

Where one of several co-sharers, owners of a piece of land defined by metes and bounds and forming part of a revenue-paying estate, brings a suit for partition, in which he does not seek to have his joint liability for the whole of the Government revenue annulled, such suit is cognizable by the Civil Courts which have jurisdiction to determine the plaintiff's right to have his share divided and to make a decree accordingly.

In this case the plaintiff, who claimed a twelve-anna share in certain land, defined by metes and bounds, forming part of a revenue-paying estate, sued the defendant, whom he alleged to be the owner of the remaining four annas, for partition, praying for "a decree awarding him distinct possession, not by the partition of rent according to his share, but by partition of the land." The plaint stated that, by a solenamah, or deed of compromise, dated the 8th of July 1874, between the plaintiff and the defendant, it was agreed that the parties thereto should hold the land in question in the abovementioned shares, and that the defendant had agreed to an amicable partition, but had refused to carry it out. The defence was, that there were other parties interested in the land who were not joined as parties, and that there were other lands in joint possession, of which the plaintiff sought no partition.

The suit was dismissed in the Court of first instance, and this decision was affirmed on appeal. The plaintiff then appealed to the High Court.

Mr. H. Bell, Baboo Mohiny Mohun Roy, and Baboo Jay Gobind Shome for the appellants.

Appeal from Appellate Decree, No. 1632 of 1879, against the decree of H. Manspratt, Esq., District Judge of Sylhet, dated the 20th May 1879, modifying the decree of Baboo Ram Coomar Pal Chowdhry, Subordinate Judge of that district, dated the 3rd of September 1878.

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Baboo *Sreenath Dass* and Baboo *Auhhil Chunder Sen* for
the respondent.

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Mr. *H. Bell* for the appellant.—In all cases of joint ownership, each party has a right to demand and enforce partition—*Shama Soonduree Debia v. Jardine, Skinner, & Co.* (1). Partition may be had of a revenue-paying estate where, as in this case, the partition may be carried out without apportioning the revenue—*Ranee Shama Soonduree Debia v. Kooer Puresh Narain Roy* (2). The parties themselves may make an amicable partition binding on themselves, though not on the Collector—*Tripoorah Soondoree Chowdhranee v. Kali Chunder Chowdhry* (3); and what the parties may do without suit, the Civil Court may do on suit being brought. The Collector has nothing to do with such a partition—*Ajoodhia Lall v. Gumani Lall* (4). This is a suit of a civil nature which the Civil Courts have jurisdiction to try—see Civil Procedure Code, ss. 11 and 16; and when such a suit is brought and a decree given, s. 265 of the same Code shows how it is to be executed. I admit that all the persons interested should have been made parties to the suit.

Baboo *Sreenath Dass* for the respondent.—A suit will not lie for the partition of a revenue-paying estate—*Mohsun Ali v. Nuzum Ali* (5), *Ruttonmonee Dutt v. Brojomohun Dutt* (6), and *Shaw Khairuddin v. Sheikh Abdul Baki* (7). Section 265 of the Civil Procedure Code does not apply, for here the suit is not for partition of a revenue-paying estate, but for the partition of a block of land within the estate, for which the Code makes no provision, and which, therefore, impliedly cannot be brought. [MORRIS, J.—The implication from the section is the other way. The jurisdiction of the Civil Court to carry out the partition seems to be taken away, only in case of a co-sharer in the whole of a revenue-paying estate who requires partition of it.] The plaintiff is seeking

(1) 12 W. R., 160.

(4) 2 C. L. R., 184.

(2) 20 W. R., 182.

(5) 6 W. R., 15.

(3) 18 W. R., 327.

(6) 22 W. R., Act X Rul., 333.

(7) 3 B. L. R., A. O., 65.

possession of a portion only of the lands held in joint possession. Such a suit will not lie.—Special Appeal, No. 2134 of 1879, decided by Prinsep and Cunningham, JJ., March 11th, 1881.

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Mr. *Bell* in reply.

Cur. ad vult.

The following judgments were delivered :

TOTTENHAM, J.—It appears to me that the reasons given by the lower Courts for entirely dismissing the plaintiff's suit are not sound in law. It may be that, as observed by the District Judge, the power to make partition of lands paying revenue to Government (that is, as between persons by whom the revenue is payable) is restricted to the Collector; but that restriction does not exclude the Civil Court from determining the right of one of such persons to have his share divided, and from making a decree accordingly, in a suit in which the plaintiff does not seek to have his joint liability for the whole of the Government revenue annulled. In the present case Mr. Bell for the appellant has expressly deprecated any partition of the Government revenue, and points to the sixth paragraph of the plaint as showing that plaintiff never intended to demand it.

There can be no doubt that a right to partition is inherent in owners of joint property; and s. 11 of the Code of Civil Procedure provides that the Courts shall, subject to certain provisions, which do not apply to the present case, have jurisdiction to try all suits of a civil nature, excepting suits of which their cognizance is barred by any enactment for the time being in force.

Thus it appears to me impossible to say, that the present suit will not lie in the Civil Court, and the fact noticed by the lower Courts that the plaintiff's share in the estate exists only in a portion of it, and not in all the lands comprised in it, seems to me to afford no reason why he should be barred from obtaining a partition of his share such as it is. The Court might hesitate to allow him a decree for the severance of a portion only of his share, or of his proportionate shares of particular

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plots ; but if he claims to have his whole share divided, as Mr. Bell states that he does, and disclaims any share in lands not included in this suit, I see no reason why he should not obtain what he claims: and it appears from the written statement of the defendant that he has no real objection to a partition of the plaintiff's just share. As to certain partitions of the lands of which a share is claimed, the Courts have found as a fact, that the plaintiff has no right in them. This will not prevent his obtaining his share of what does really belong to him.

As to the alleged misjoinder and nonjoinder of proper parties, the suit cannot fail on that account. If the lower Appellate Court thinks it necessary that other parties be joined in the suit, it is open to it to so order.

The decree of the lower Court must be set aside with costs, and the case must go back for a fresh trial with reference to the observations above made.

MORRIS, J. — I understand the plaintiff to be a fractional shareholder of a revenue-paying estate called Chota Hissa, No. 24, and to possess an interest in only one village, by name Kharki, of this estate. The lands of this village, so far as they appertain to this estate, are held in joint tenancy by the plaintiff and the defendant in the proportion of twelve annas and four annas respectively, under a certain deed of solehuamah.

By the present suit the plaintiff asks the Court to direct partition by metes and bounds of the lands constituting his twelve annas share. To this, two objections are raised: *first*, that the plaintiff has not asked for the partition of all the lands which formed the subject of the solehuamah; and *second*, that, on the principle laid down in the case of *Ruttonmonee Dutt v. Brojomohun Dutt* (1), the Civil Court cannot direct the partition of a block or small quantity of revenue-paying land of a joint estate. On the first point, however, it is clear that the plaintiff disclaims possession or ownership of the plots referred to, and only asks for partition of those lands which are held by him jointly with the defendant. In connection with this estate he denies that he is in possession of any other lands.

(1) 22 W. R., Act X Rul., 333.

This being so, his case appears to come entirely within the provisions of s. 265 of the Civil Procedure Code, and the second objection fails. The plaintiff, by this suit, substantially asks for the partition of his entire share in this undivided estate. I agree, therefore, in thinking that the Civil Court has jurisdiction to give him the relief he seeks, and, setting aside the order of the District Judge, direct that the case be returned to him to be dealt with on the merits. Appellant is entitled to the costs of this appeal.

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Case remanded.

Before Mr. Justice McDonell and Mr. Justice Field.

PROSAD DOSS MULLICK AND OTHERS (PLAINTIFFS) v. RUSSICK
LALL MULLICK AND ANOTHER (DEFENDANTS).*

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March 17.

PROSAD DOSS MULLICK AND OTHERS (PLAINTIFFS) v. KEDAR
NATH MULLICK AND OTHERS (DEFENDANTS).*

*Jurisdiction—Winding up Partnership—Subordinate Court—District Court—
Contract Act (IX of 1872), s. 265—Civil Courts Act (Act VI of 1871),
s. 11.*

The Court of a Subordinate Judge is inferior to the Court of a District Judge within the meaning of s. 11 of the Civil Courts Act.

The word "may" in s. 265 of the Contract Act has a somewhat similar force to the words "it shall be lawful" in a Statute, which merely make that legal and possible which there would otherwise be no right or authority to do. And the words "may apply" in the section create a new jurisdiction, which must be exercised strictly in accordance with the Statute which creates it,—that is to say, the jurisdiction created by the section must be exercised exclusively by a Court not inferior to the Court of a District Judge, within the local limit of whose jurisdiction the place or principal place of business of the firm which it is sought to wind up is situated.

It was the intention of the Legislature, in enacting s. 265 of the Contract Act, to create a new jurisdiction to be exercised exclusively by the Court of the District Judge; and in the absence of a contract to the contrary, the members of a partnership, or their representatives, cannot obtain the relief mentioned in the section except by resorting to that Court.

Appeal from Original Decree, No. 269 of 1879 and No. 14 of 1880, against the decree of Baboo Srinath Roy, Subordinate Judge of Hooghly, dated the 26th July 1879.