

Before Mr. Justice Mahmood.

1887
June 13.

IJRAIL (DEFENDANT) v. KANHAI AND ANOTHER (PLAINTIFFS).*

Jurisdiction—Civil and Revenue Courts—Suit for partition and possession of a share in a particular plot in a patti—Act XIX of 1873 (N.-W. P. Land Revenue Act), ss. 135, 241 (f).

A suit by a co-sharer in a joint zamindari estate for partition and possession of his proportionate share of an isolated plot of land is not maintainable in a civil Court, with reference to ss. 135 and 241 of the N.-W. P. Land Revenue Act (XIX of 1873). *Ram Dayal v. Megu Lal* (1) distinguished.

THE plaintiffs in this case, Kanhai and Bhaggu, obtained a decree against the defendant, Ijrail, on the 14th September, 1882, declaring their proprietary right to a one-third share in a plot of land measuring 5 bighas 19 biswas, adversely to the plea of the defendant that the plot was *sir* land belonging exclusively to himself. They subsequently brought the present suit in the Court of the Munsif of Kaimganj, praying for actual partition and possession of the one-third share to which their decree had declared them entitled. The claim was described in the plaint as a claim for "possession by means of partition of a one-third share of 5 bighas and 19 biswas *pucka*." The plot in which the one-third share in suit was held was part of a patti measuring 203 bighas 11 biswas.

The defendant pleaded that partition of the plot could not be had without partition of the entire *patti*, but that partition of the entire *patti* could be claimed only in the Revenue Court, with reference to ss. 135 and 241 (f) of the North-Western Provinces Land Revenue Act, and that the Munsif had therefore no jurisdiction to entertain the suit.

The Munsif held that he had jurisdiction, observing as follows:—"In my opinion the plaintiffs should not be prohibited from suing in this Court, as the claim refers to a very small portion of land out of their one-third share in a *patti* of the village, and the whole *patti*, as admitted by both parties, is 203 bighas and 11 biswas *pucka*. The provisions of the Revenue Act cannot be applicable to the partition of such small portions of land. Had

* Second Appeal, No. 1960 of 1886, from a decree of W. H. Hudson, Esq., District Judge of Farukhabad, dated the 15th July, 1886, affirming a decree of Maulvi Muhammad Unwar Husain, Munsif of Kaimganj, dated the 12th May, 1886.

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the plaintiff claimed his whole share of the *patti* in the village, he would have claimed it in the Revenue Court and applied for partition there. This view is supported by *Ram Dayal v. Megu Lal*, (1). As the claim is not only for partition but for possession of the land too, there is no reason to doubt its validity." The Munsif, after considering the suit upon the merits, passed a decree in favour of the plaintiffs.

The defendant appealed to the District Judge of Farukhabad, who gave judgment as follows :—

"I am of opinion that this case is ruled by the judgment given in the precedent cited by the lower Court, *viz.*, the case of *Ram Dayal v. Megu Lal* (1), and that the object sought by the plaintiffs does not require the intervention of the Collector for the purpose of giving effect to a decree previously obtained. The plaintiffs originally sued for a declaration that the plot of 5 bighas 19 biswas (now in suit) was not *str* land belonging to the defendant, but that one-third of it belonged to them (the plaintiffs), and they obtained a decree on the 14th September, 1882. They now sue to get possession of this one-third share of this particular plot of land, and to get it by means of an actual physical partition of this plot. I do not think it was necessary for them to apply to the revenue authorities for a partition of their share in the whole estate in which they are co-parceners, inclusive of their zamindari rights, in order to get their proportionate area of the plot in suit; and I therefore hold that they were entitled to sue in the civil Court for possession of the land which the civil Court had declared their right to. The other pleas of the appellants are futile, and the appeal is dismissed with costs."

The defendant appealed to the High Court.

Maulvi *Abdul Majid*, for the appellant.

Babu *Ratan Chand*, for the respondents.

MAHMOOD, J.—This was an action for the understanding of which the following few facts are necessary :—The subject-matter of dispute between the parties is certain land constituting an area of 5 bighas 19 biswas of land, being the aggregate area of four plots, *viz.*, Nos. 146, 337, 526, and 688 of *pukhta* or *pucka* measurement. These very plots were the subject-matter of litigation

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between the parties upon a former occasion, in which litigation the parties being co-sharers of the land, the dispute was whether it did or did not form the private *str* land of the present defendant-appellant, Ijrail. In that litigation Ijrail was unsuccessful, and the final decree of the 14th September, 1882, declared that the plaintiffs-respondents now before me were entitled to a one-third share in the *patti* to which these lands appertain. Having obtained that decree the plaintiffs instituted this suit with the object of having these four plots of land specifically partitioned, upon the allegation that these lands were the joint property of the parties, and that circumstances had arisen which would entitle the plaintiffs to claim a separation of the shares for which they pray. Both the Courts below, feeling themselves bound by the adjudication of the 14th September, 1882, held that the plaintiffs were entitled to the one-third share in these plots, and with reference to the ruling of this Court, to which I was a party in the case of *Ram Dayal v. Megu Lal* (1), those Courts have held that such a suit was entertainable by the civil Court. The main defence urged by the defendant-appellant in the Court below was that such an action virtually amounted to claiming partition of a portion of the mahál, irrespective of the other plots constituting the mahál; and he contended that although the plaintiffs were entitled to the one-third land, yet the share could not be separated in this isolated manner irrespective of the revenue law. Upon these grounds it was further contended by him that the action was not maintainable by the civil Court. This contention having been disallowed by both the Courts below, the present second appeal repeats that contention, and I am of opinion that it has force. It is admitted on all hands that the parties are co-sharers of the *patti* in which these four plots are situate, also that these plots form part of numerous other plots of land situate in that same *patti*, also that all these plots are jointly owned by the parties along with other co-sharers of the *patti*, and this being so, the prayer contained in the plaint amounts simply to asking for a partition of four plots out of many more plots included in the zamindári property. By s. 241 of Act XIX of 1873 (the Land Revenue Act), matters of this description have been excluded from the jurisdiction of the civil Court, and the reason of the law seems to be that if isolated plots are to be

(1) I. L. R., 6 All. 452.

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brought into litigation for purposes of partition in this manner, the broad partition which can be effected only by a Revenue Court, such as is contemplated by ss. 107 to 139 of the Revenue Act, could not be properly worked. The only ruling upon which reliance is placed for the opposite view by Mr. *Ratan Chand* on behalf of the respondents is the ruling to which I have already referred. And as the judgment in that case was delivered by myself, I think I need only say that the effect of that judgment is simply to hold that when a civil Court has passed a decree whereby certain trees were to be uprooted, without specifying the exact area from where the trees were to be uprooted, the Court executing that decree (behind which decree such Court could not go) could give effect to that decree without resorting to the provisions contained in s. 265 of the Code. I do not understand that ruling to mean that any co-sharer of a joint zamindari estate could, by suing for partition and division of isolated plots of land, bring about a state of things whereby it would (when the question arises before the Revenue Court) be extremely inconvenient, if not impossible, to duly effect a partition, such as the Revenue Act in s. 135 and in other sections contemplates. I hold therefore, that the nature of the claim set forth in the plaint in this suit, and the defence set up thereto, gave rise to a dispute of such a character as could not be entertained by a civil Court, and should have been dismissed upon this ground *in limine*. For these reasons I decree this appeal, setting aside the decrees of both the lower Courts. The plaintiffs-respondents' suit will stand dismissed with costs in all the Courts.

Appeal allowed.

Before Mr. Justice Mahmood.

NAURANG SINGH AND OTHERS (DEFENDANTS) v. SADAPAL SINGH,
PLAINTIFF.*

Arbitration—Revocation of submission to arbitration—Appellate decree in accordance with award—Second appeal—Civil Procedure Code, ss. 508, 521, 522, 582.

By reason of s. 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of first appeal, holding that the award was not open to

* Second Appeal, No. 928 of 1886, from a decree of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 25th February, 1886, reversing a decree of Babu Nihal Chandra, Munsif of Azamgarh, dated the 18th July, 1885.