

Before Mr. Justice Straight and Mr. Justice Brodhurst.

1885
March 4.

HABIBULLAH (PLAINTIFF) *v.* KUNJI MAL (DEFENDANT).^a

Partition of Mahal—Jurisdiction—Civil Courts—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 241 (f).

B, the recorded proprietor of a 7 biswas 10 biswansis share in a village, the recorded area of which was 476 bighas and 5 biswas, purchased a 16 biswansis and 13½ kachwansis share in the same village. In 1872, at the time of settlement, *B* was recorded as the proprietor of an 8 biswas 6 biswansis and 13½ kachwansis share, and the area of this was recorded as 476 bighas and 5 biswas, that is to say, the same area as was recorded before the purchase. In 1876, *H* purchased *B*'s rights and interests in the village, and in 1877 applied for partition of the share of which he had been recorded proprietor, and the same was partitioned, an area of 476 bighas and 5 biswas being allotted to him. Subsequently he brought a suit against the proprietors of the other estates into which the village had been divided, for 61 bighas 4 biswas and 8 biswansis of land, alleging that, at the settlement of 1872, the area of *B*'s rights and interests had been erroneously recorded as only 476 bighas and 5 biswas.

Held that the suit would not lie in the Civil Court, being barred by the provisions of s. 241 (f) of the N.-W. P. Land-Revenue Act (XIX of 1873).

ONE Mrs. Berkeley, the recorded proprietor of a 7 biswas and 10 biswansis patti of a village, purchased a 16 biswansis and 13½ kachwansis share in the village, belonging to one Gulab Singh, situated in another patti of the village called patti Guman Singh. At the time of this purchase the recorded area of Mrs. Berkeley's 7 biswas and 10 biswansis patti was 476 bighas and 5 biswas; and the recorded area of Gulab Singh's share was 61 bighas, 4 biswas, and 8 biswansis. In 1872, at the time of settlement, Mrs. Berkeley was recorded as the proprietor of an 8 biswas, 6 biswansis, and 13½ kachwansis share of the village, and the area of her share was recorded as 476 bighas and 5 biswas; that is to say, the area which was recorded before her purchase of Gulab Singh's share. In 1876 the plaintiff in this suit purchased Mrs. Berkeley's rights and interests in the village. In 1877 the plaintiff applied for the partition of Mrs. Berkeley's 8 biswas 6 biswansis and 13½ kachwansis share, of which he had been recorded proprietor, and the same was partitioned, an area of 476 bighas and 5 biswas being allotted to the plaintiff. In 1882, the plaintiff brought the present suit against the proprietors of the other estates into which the

^a Second Appeal No. 312 of 1884, from a decree of T. B. Tracy, Esq., Offg. District Judge of Bareilly, dated the 22nd December, 1883, reversing a decree of Babu Nilmadhab Banarji, Munsif of Haveli, Bareilly, dated the 21st August, 1883.

1885

HABIBULLAH
v.
KUNJI MAL.

village had been divided for 61 bighas 4 biswas and 8 biswansis of land as the area of Gulab Singh's 16 biswansis and $13\frac{1}{2}$ kachwansis share of patti Guman Singh, alleging that at the settlement of 1872 the area of Mrs. Berkeley's rights and interests in the village had been erroneously recorded as only 476 bighas and 5 biswas. The suit was originally dismissed by the Court of first instance on the ground that the jurisdiction of the Civil Courts in respect of its subject-matter was barred by s. 211 (f) of Act XIX of 1873 (N.-W. P. Land-Revenue Act). On appeal by the plaintiff the then Judge of the lower appellate Court held that the cognizance of the suit by the Civil Courts was not barred by that section, and remanded the case for re-trial. On appeal by the defendants to the High Court from the order of remand, Straight and Brodhurst, J.J., affirmed that order. The Court of first instance re-tried the case, and decreed the claim against the defendants jointly. On appeal by Kunji Mal, defendant, the proprietor of one of the other estates into which the village had been divided, the then Judge of the lower appellate Court held that the suit was bad for many reasons; among others, because it was really an objection to the allotment of area at partition, and dismissed the suit.

The plaintiff appealed to the High Court.

Babu *Jogindro Nath Chaudhri*, for the appellant.

Munshi *Hanuman Prasad* and Pandit *Bishambhar Nath*, for the respondent.

STRAIGHT, J.—In saying what I am about to say about this appeal, I think it right to remark that my brother Brodhurst, at the hearing of the original appeal that came up before us as an appeal from an order of remand, was inclined to take a view contrary to that which was ultimately expressed in our former order. He was indisposed, after consideration, on the materials then before us, to record a formal difference of opinion, and preferred to join with me in ruling that the suit did lie in the Civil Court. The effect of our order, as then made, was to remand the case, but it must be taken to have been passed solely in advertence to the materials then before us. The result of this remand is, that we have now a quantity of matter and information that was not available on the former occasion for consideration. It appears that in 1872 Mrs. Berkeley's

1885

 HABIBULLAH
 v.
 KUNJI MAL.

name was recorded in respect of a 7 biswas 10 biswansis share, the area of which, as shown in the revenue papers, was 476 bighas, 5 biswas. She subsequently purchased a 16 biswansis $13\frac{1}{2}$ kachwansis share from one Gulab Singh in patti Guman Singh, the area of which share was recorded as 61 bighas 4 biswas 8 biswansis. So that in 1876, when the plaintiff purchased the rights and interests of Mrs. Berkeley, he would appear to have been *prima facie* entitled to 476 bighas 5 biswas, *plus* 61 bighas 4 biswas, 8 biswansis. At the partition in 1877 the share of the plaintiff was recorded as 8 biswas 6 biswansis and $13\frac{1}{2}$ kachwansis, and the area appertaining to this share was still recorded as 476 bighas 5 biswas. From this it would appear that, on the face of it, there was a deficiency of 60 and odd bighas in the plaintiff's share; but, as the learned Pandit who appeared for the respondent has very properly remarked, the areas which are recorded at the settlement as pertaining to a particular fractional share are more or less approximate, and it is only when a partition is being carried out that the proportion of area to fractional shares can be ascertained with anything like accuracy. In the present case, it may well have been that 476 bighas 5 biswas fairly represented the proportion of area to which the 8 biswas 6 biswansis and $13\frac{1}{2}$ kachwansis share was entitled out of the whole area.

The question then substantially raised by the suit is, was the area allotted to plaintiff at the partition in respect of his 8 biswas 6 biswansis and $13\frac{1}{2}$ kachwansis share a reasonable distribution?

Now under s. 241 of Act XIX of 1873, cl. (f), the distribution of the land or allotment of the revenue of a mahal by partition are matters over which the Civil Courts are forbidden to exercise any jurisdiction, and this is virtually what this suit invites us to do. Upon the fuller materials now before us, I feel myself constrained to hold that the suit does not lie in the Civil Court, being barred by the provisions of s. 241 of the Revenue Act, and I would dismiss the appeal with costs.

BRODHURST, J., concurred.

Appeal dismissed.