

made in fraud of the right of maintenance. In *Lakshman Ramchandra Joshi v. Satyabhamabai* (1) it was held that the mere circumstance that a purchaser for value had notice of the claim for maintenance is not conclusive of the widow's rights against the property in his hands. Mr. Justice West further held that "what was honestly purchased is free from her claim for ever: what was purchased in furtherance of a fraud upon her, or with knowledge of a right which would thus be prejudiced, is liable to her claim from the first." As pointed out by Mr. Mayne in his work on Hindu Law, paragraph 421, page 518, 5th Edition, section 39 of the Transfer of Property Act, substantially gives effect to the views expressed in the case cited above.

For these reasons we are of opinion that the view taken by the learned Judge of the lower appellate court is right and that this appeal must fail. We dismiss it with costs.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Aikman.
 ASHIQ HUSAIN (OBJECTOR) v. MUHAMMAD JAN AND OTHERS
 (APPLICANTS)*

*Act No. XIX of 1873 (N.-W. P. Land Revenue Act), sections 107 et seqq—
 Partition—Revenue Courts not competent to partition buildings.*

In a partition under the North-Western Provinces Land Revenue Act, 1879, neither buildings nor the materials thereof can be partitioned; what is partitioned is the land in the mahal. Where such land is covered with buildings, the Court making the partition has to follow the provisions of section 124 of the Act; but it can decide no question of right to the buildings, nor can it partition them.

THIS appeal arose out of an application made by the respondents for partition of certain resumed muafi and shamilat lands in the village of Muhammadpur, together with the buildings thereon, consisting of various shops and houses. Objections were filed by the appellant Ashiq Husain, including one, to the effect that the Revenue Court was not competent to partition the shops and houses. These objections were disallowed summarily by an Assistant Collector, but on appeal the District Judge made an

* Second Appeal No. 829 of 1897 from a decree of C. Rustomjee, Esq., District Judge of Moradabad, dated the 5th August 1897, confirming the order of Kuar Bahadur, Assistant Collector of Moradabad, dated the 18th June 1895.

(1) (1877) L. L. R., 2 Bom., 494.

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order of remand under section 562 of the Code of Civil Procedure. On this remand the Assistant Collector went into the case at length and passed an order directing the partition of nine shops and buildings appertaining thereto, as also of a certain *diwan khana* and *rath khana*.

From this order the objector, Ashiq Husain, appealed to the District Judge, again urging that the order for partition of the buildings was not within the competence of a Court of Revenue.

The District Judge, apparently without considering the question of jurisdiction raised by the appellant's first plea, dismissed the appeal and confirmed the order of the Assistant Collector.

The appellant thereupon appealed to the High Court.

Pandit *Moti Lal* and Maulvi *Ghulam Mujtaba*, for the appellant.

Munshi *Gobind Prasad*, for the respondents.

BANERJI and AIKMAN, JJ.—This appeal arises out of an application for partition made under Act No. XIX of 1873. Some objections having been raised, the Court of Revenue tried those questions under section 113 of the Act. In doing so the Assistant Collector determined the extent of the shares of the different owners of the mahal in respect of certain buildings, and ordered that the Amin should make a partition of the buildings, including rafters, bricks, stones and other materials of each building. We are surprised that such an order of the Assistant Collector, which was manifestly *ultra vires*, has been sustained by the learned District Judge. It is beyond question that in partition proceedings under the North-Western Provinces Land Revenue Act neither buildings nor the materials thereof can be partitioned. What is partitioned is the land of the mahal: where such land is covered by buildings the Court making the partition has to follow the provisions of section 124 of the Act, but it can decide no question of right to the buildings, nor can it partition them. We allow the appeal and set aside so much of the order of the Courts below as directs the partition of the buildings in question. The parties will pay their own costs in all Courts.

[This ruling was followed by Banerji, J., in Second Appeal No. 13 of 1900, decided on the 9th June, 1900, the judgment in

which is printed below.* See also the case of *Abdul Rahman v. Mashina Bibi (1)*—Ed.]

Decree modified.

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Before Mr. Knox, Acting Chief Justice, and Mr. Justice Blair.

SHIAM KARAN AND ANOTHER (JUDGMENT-DEBTORS) v. RAGHUNANDAN PRASAD AND ANOTHER (DECREE-HOLDERS).†

Letters Patent, section 8—Appeal—Presentation of appeal by a person other than an advocate, vakil or attorney of the Court, or a suitor.

Held, that the presentation of an appeal by a person who was not an advocate, vakil or attorney, of the Court, nor a suitor, is not a valid presentation in law, having regard to section 8 of the Letters Patent of the High Court.

* BANBURI, J.—I think that the decree of the Court below is right and this appeal must be dismissed. The suit relates to a one-fourth share of the walls of an enclosure, and to gates, and turrets appertaining to a *gerhi* in the village Talra. The plaintiff claims a moiety of the said share. He is one of the three sons of one Jawahir Singh. The defendants are his nephews, being the sons of the plaintiff's brother Fateh Singh. The third brother, Anup Singh, is dead and left no issue. The plaintiff's case is that the three brothers were joint, that the property in question was acquired with joint funds, and that consequently he is entitled to a half share of the said property. It appears that a partition of the village has been effected and the shares owned by the parties have been divided by the Revenue Authorities. The walls, gates, and turrets in suit are said to have been allotted by the Revenue Authorities to the defendants as appertaining to their share. It is in consequence of this order of the Revenue Authorities that the plaintiff has brought the present suit. The lower appellate Court has found as a fact that the property was acquired by Anup Singh when the family was joint, that the plaintiff and the defendant's father Fateh Singh lived jointly with Anup Singh, and that upon Anup Singh's death both of them became owners in equal moieties of the property in question. It has also been found that the defendants had failed to prove that the property had been acquired separately by Fateh Singh. That Court has decreed the plaintiff's claim with the exception of a small portion of it with which we are not concerned in this appeal. The first two pleas taken in the memorandum of appeal are to the effect that the decision by the Revenue Authorities precludes the plaintiff from maintaining the present suit. This objection is, in my opinion, utterly untenable. It was not within the competency of the Revenue Authorities to partition a building. It is only the land of a *malah* which the Revenue Authorities are empowered to partition by Act No. XIX of 1873. If those authorities took upon themselves to partition the buildings, that is, the walls, the gates, and the turrets in suit, they acted *ultra vires*. This was held in second appeal No. 829 of 1897, decided on the 28th of April, 1900. Further, I notice that in this case the District Judge held in the appeal preferred to him from the order passed in the partition proceedings that the parties should have their rights to the buildings determined by a civil suit. It is clear, therefore, that the plaintiff is not precluded from maintaining the present suit in the Civil Court as held by the Courts below. The other grounds of appeal must, having regard to the findings of the lower appellate Court, fail. As I have said above, that Court has found, and I think upon cogent grounds, that the property was joint. Therefore the plaintiff was entitled to the decree which has been granted to him. I dismiss the appeal with costs.

† First Appeal from order No. 121 of 1899 from an order of Babu Kunwar Mohan Lal, Subordinate Judge of Benares, dated 15th July 1899.