

Subordinate Judge" within the meaning of section 14. If then the Subordinate Judge had jurisdiction to hold the inquiry, it is quite clear that he had jurisdiction to grant the sanction, and the learned District Judge had jurisdiction to confirm the order of the Subordinate Judge. The application then is not brought within the provisions of section 622 of the Code of Civil Procedure, and this Court has no power to interfere with it. As a result the application must be dismissed with costs.

Application dismissed.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burditt.

JAGAN NATH (PLAINTIFF) V. TIRBENI SAHAI AND OTHERS (DEFENDANTS).*

Act No. XIX of 1873, (N.-W. P. Land Revenue Act), sections 132, 241—Act (Local) No. III of 1901, (United Provinces Land Revenue Act), section 223 (k)—Partition—Civil and Revenue Courts—Jurisdiction.

A plaintiff came into Court upon the allegation that a certain grove had upon partition been wrongly allotted to the defendants' mahal whereas it should have been allotted to his (the plaintiff's) mahal, and he claimed a decree for a declaration of his title or for possession. *Held* that section 203 (k) of the United Provinces Land Revenue Act, 1901, barred the cognizance of such a suit by a Civil Court. *Kishan Prasad v. Kadher Mal* (1) distinguished.

THIS was an appeal under section 10 of the Letters Patent from a judgment of Banerji, J. The facts of the case sufficiently appear from the judgment under appeal which was as follows:—

BANERJI, J.—The facts of this case are these—The village Alipur was by an imperfect partition made in 1881 divided into 32 pattis. On the 5th of August 1892, Hira Lal, a co-sharer in the village, applied to the Revenue Court for perfect partition and prayed that certain pattis which belonged to him should be formed into a separate mahal. The defendants Tirbeni Sahai, Gomti Sahai and Musammat Suraj Kunwar, who were named as opposite parties to the application of Hira Lal, made an application on the 15th of December 1892 in which they asked that their pattis

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also should be formed into a separate mahal. On the 18th of August 1893 a partition proceeding was drawn up to the effect that 20 pattis should be formed into different mahals and 12 pattis, one of which was patti No. 32, should form a separate mahal to be called the mahal of the *non-applicants for partition*. Accordingly a partition was effected, which has been confirmed by the Collector. By this partition the village was divided into 26 mahals, the 26th mahal being that of the non-applicants for partition. The pattis of Tirbeni Sahai and others were included in mahal Hira Lal. In patti No. 32, which is the patti of the plaintiff and which was included in the 26th mahal, the mahal of the non-applicants for partition, there is a grove No. 623. This grove was allotted to the mahal in which the defendants are co-sharers. The plaintiff states that he has a half share in the grove, that the defendants have no right to that half share and that the inclusion of the whole of the grove in the defendants' share was improper. The plaintiff accordingly brought the present suit for a declaration of his right to a half share of the grove No. 623 and in the alternative for possession of that share. The court of first instance dismissed the suit as barred by the provisions of section 233, clause (k) of the Land Revenue Act (No. III of 1901). The lower appellate Court has set aside the decree of that Court and has decreed the plaintiff's claim. That Court was of opinion that as under the partition proceeding patti No. 32 was excluded from partition, the revenue authorities had no jurisdiction to include the grove in suit, which appertained to the said patti, in the mahal of the defendants. The learned Judge relies upon the decision of this Court in *Kishen Prasad v. Kadher Mal* (1). That case is clearly distinguishable from the present. What happened in that case was that under a previous partition of the land of the village four mahals had been formed, one of which was called *patti shamilat*. Subsequently a partition of *patti shamilat* alone took place and certain land which appertained to one of the other three mahals was partitioned. It was held that this partition did not preclude the Civil Court from determining the plaintiff's right to a plot of land which was not the subject of the partition of the mahals.

(1) Weekly Notes, 1900, p. 11.

shamilat. In the present case the whole of the village was under partition. The revenue authorities directed that the village should be divided into 25 mahals, one of which, the mahal of the non-applicants for partition, was to consist of 12 pattis. If land which appertained to one of these 12 pattis was allotted to another of the mahals under the partition, that was a matter relating to partition and ought to have formed the subject of an appeal under section 132 of Act No. XIX of 1873, which was the Act under which the partition in question was effected. Rightly or wrongly, the revenue authorities allotted to the defendants' mahal what the plaintiff says ought to have been allotted to his mahal, namely, the mahal of the non-applicants for partition. This was clearly a question relating to the partition or union of mahals within the meaning of clause (k), section 233 of Act No. III of 1901 and was therefore not cognizable by a Civil Court. The plaintiff mistook his remedy, and, instead of appealing against the order confirming the partition, he brought the present suit in a Civil Court. Such a suit falls within the prohibition of section 233 (k) and is not maintainable. The Court of first instance was in my judgment right. I accordingly allow the appeal, set aside the decree of the court below and restore that of the Court of first instance with costs in all Courts.

Against this judgment the plaintiff appealed.

Dr. *Satish Chandra Banerji* (for whom *Babu Sarat Chandra Chaudhri*), for the appellants.

Babu Sital Prasad Ghosh, for the respondents.

STANLEY, C. J., and BURKITT, J.—We agree in the view taken by the learned Judge of this Court from whom this appeal has been preferred, and dismiss the appeal with costs.

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