

APPELLATE CIVIL.

1910
April 5.*Before Mr. Justice Richards and Mr. Justice Tuddall.*

MUHAMMAD NASAR-ULLAH KHAN (OPPOSITE PARTY) v. MUHAMMAD ISHAQ KHAN (APPLICANT).*

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 111, 112—Partition—Lands held under a private partition claimed by non-applicant—No question of proprietary title—Appeal.

When in a suit for partition of revenue paying lands one of the non-applicants alleged that under a private partition he was in possession of certain lands and claimed those lands for himself, and the Collector in appeal ordered those lands to be given to him; *Held* that no question of proprietary title was raised and no appeal lay to the District Judge against the order of the Collector. *Tulsi Rai v. Gate Ram* (1) followed. *Muhammad Jan v. Sadanand Pande* (2) distinguished.

THIS was an appeal arising out of an application for partition of revenue-paying lands made by one Muhammad Ishaq Khan. One of the non-applicants, Muhammad Nasar-ullah Khan, raised objections to the effect that there had already been a private partition of the property in question, and that he was entitled to remain in possession of the property which had been thereby awarded to him, but did not deny that the property was originally the joint property of the parties. These objections were disallowed by the first court (Assistant Collector). Nasar-ullah Khan appealed to the Collector of the district who sustained his objections and modified the order of the Assistant Collector, directing that "the lots of the private partition be regarded as the severalty of their owners." From this order the applicant appealed to the District Judge, who entertained the appeal and reversed the Collector's order. Nasar-ullah Khan appealed to the High Court upon the main ground that no question of proprietary title was raised in the case, and therefore no appeal lay to the District Judge.

Mr. W. K. Porter (with him Maulvi Ghulam Mujtaba), for the appellant.

Maulvi Muhammad Ishaq (with him Mr. B. E. O'Connor), for the respondent.

* Second Appeal No. 219 of 1909, from a decree of H. J. Bell, District Judge of Aligarh, dated the 23rd of January, 1909, reversing a decree of G. C. W. Ingram, Collector of Aligarh, dated the 18th of March, 1907.

(1) Weekly Notes, 1904, p. 225. (2) (1906) I. L. R., 28 All., 394.

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MUHAMMAD
NASAR-
ULLAH KHAN
v.
MUHAMMAD
ISHAQ KHAN.

RICHARDS and TUDBALL, JJ.—The facts out of which this appeal has arisen are shortly as follows:—Muhammad Ishaq Khan made an application in the Revenue Court for partition. Objections were filed by the appellant here, Muhammad Nasar-ullah Khan. The purport of these objections was that there had already been a private partition between the parties of a great portion of the property, and he contended that this private partition should be paid regard to and that the lands which had been allotted to him by this private partition should be maintained in his possession. These objections were disallowed by the Assistant Collector in charge of the partition by an order of the 15th December, 1906. There was an appeal to the Collector who made an order on the 18th March, 1907. In this order he points out that he has gone carefully into the whole matter. He says that there was a private partition, and that he could find no trace of the said private partition being merely of a temporary nature. He then proceeds to say:—"I come to the same conclusion as Babu Mahesh Prasad, and accepting the appeal direct that the lots of the private partition regarded in this case as the severalty of their owners." We may mention that it was quite immaterial whether the arrangement between the parties was temporary or permanent. In making the partition of property it is the duty of a Revenue Court, as far as possible, to allot lands held in severalty to the persons so holding them; and of course it follows that any deficiency should be made good out of the common land (*vide* sections 117 and 125 of the Land Revenue Act III of 1901). From the order of the Collector an appeal was preferred to the District Judge who reversed the order of the Collector. The present appeal is taken on the ground that no appeal lay to the District Judge. In our opinion this plea is well founded. The case of *Tulsi Rai v. Gate Ram Rai* (1) is directly in point. The case of *Muhammad Jan v. Sadanand Pande* (2) relied on by the learned District Judge is quite distinguishable. There one of the parties expressly made claim to proprietary title based on adverse possession. We may mention that one of the learned Judges who decided the case of *Tulsi Rai v. Gate Ram Rai* was also a party to the case of *Muhammad Jan v. Sadanand Pande*

(1) Weekly Notes, 1904, p. 225. (2) (1906) I. L. R., 28 All., 394.

and no dissent is expressed to the first mentioned ruling. In the present case in our opinion there was no question whatever of proprietary title raised between the parties. The only question raised was the question of the effect and nature of the private arrangement which had been come to between the parties; and which, in truth and in fact related only to the mode of partition. This was a matter entirely for the Revenue Court. We allow the appeal and set aside the decree of the learned District Judge. The appellant will have his costs in all courts.

Appeal decreed.

1910

MUHAMMAD
NASAR-
ULLAH KFIAN
v.
MUHAMMAD
ISHAQ KHAN.

Before Mr. Justice Richards and Mr. Justice Tudball.

1910

April 5.

PARMANAND AND ANOTHER (PLAINTIFFS) v. JAGAT NARAIN (DEFENDANT).
*Civil Procedure Code (1882), sections 215A and 216—Principal and agent—
Suit for rendition of accounts and payment of sum found due to principal—
Defence that per contra money was due to agent—Court competent to grant
a decree to agent.*

In a suit brought by the principals against an agent for rendition of accounts the agent expressed himself ready and willing to render accounts, but alleged that on such accounts being taken money would be found to be due to him; he did not, however, specifically pray for a decree for the sum alleged to be due to him. The Court granted a decree to the agent upon the finding that money was in fact due to him. *Held* that the decree was justified with reference to the provisions of sections 215A and 216 of the Code of Civil Procedure, 1882.

THE facts of this case were as follows:—

The plaintiffs brought the suit against their agent for rendition of accounts and for recovery of such amount as might be found to be due by him. The defendant, in his written statement, admitted the agency, signified his willingness to render accounts, and stated that on the accounts being taken it would be found that a sum of Rs. 2,056 was due to him from the plaintiffs. He did not, however, specifically pray for a decree for that or any other amount. The Subordinate Judge found that nothing was due to the plaintiffs, but that Rs. 487 were due to the defendant, and dismissed the suit. The plaintiffs appealed, and the defendant also filed cross-objections under section 561, Civil Procedure Code, in which he stated "that the lower court should have passed

* Second Appeal No. 179 of 1909, from a decree of Louis Stuart, District Judge of Meerut, dated the 21st of December, 1908, confirming a decree of Soti Raghubans Lal, Subordinate Judge of Meerut, dated the 24th of September, 1908.