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of the plaintiffs' interest and did not make them parties to the suit for foreclosure. As to this we may observe that it lay upon the plaintiffs seeking to redeem to allege and prove that the defendants who purchased at a sale in execution of a decree, had notice of the plaintiffs' interest.

In *Ram Nath Rai v. Lachhman Rai* (1) it was held by STRACHEY, C. J., and KNOX, J., that where sons in a joint Hindu family come into court seeking to get rid of the effect as against their interests in the joint family property of a decree on a mortgage executed by their father obtained in a suit to which they were not made parties, *the burden of proof lies on them to establish that the mortgagee, when he brought the suit, had notice of their interests in the mortgaged property.* In the present case the mortgagors do not allege that the debt contracted by their ancestor, Man Singh, was a debt contracted for any immoral or illegal purpose. They do not allege that the plaintiffs in the mortgage suits in which the property was sold had notice of their interests, and there was no evidence adduced to establish that they had any such notice. Under these circumstances and view of the weight of the authorities of this Court we think that there is no force in this appeal. We dismiss it with costs.

Appeal dismissed.

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January 31.

Before Mr. Justice Sir George Knox and Mr. Justice Banerji.
TIRBENI SAHAI AND OTHERS (DEFENDANTS) v. GOKUL PRASAD AND
ANOTHER (PLAINTIFFS)*

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233(k)—Partition—Land belonging to plaintiffs' mahal allotted to defendants and a different plot to plaintiffs—Civil and Revenue Courts—Jurisdiction.

By a mistake of a partition amin a plot belonging to the defendants was allotted to the plaintiff and two plots belonging to the plaintiff were allotted to the defendant. *Held* that no suit would lie in a civil court to rectify this error. *Kishan Prasad v. Kadher Mal* (?) distinguished.

THE FACTS of this case were as follows:—

The plaintiffs brought a suit for a declaration that they were the owners and in possession of certain plots numbered $\frac{4}{3}$ and $\frac{4}{4}$.

* First Appeal No. 92 of 1910 from an order of Banke Behari Lal, Subordinate Judge of Mainpuri, dated the 31st of August, 1910.

(1) Weekly Notes, 1899, p. 27. (2) Weekly Notes, 1900, p. 11.

They alleged that on the application of defendants 1-3, certain *pattis* were partitioned, but that the *patti* of the plaintiffs remained separate, and that by mistake at the time the distribution of plots was made the amin coloured the said numbers as belonging to the defendants and No. 4th as belonging to them. One of the pleas in defence was that the suit was not cognizable by the civil court. The court of first instance, relying on section 233(k) of Act No III of 1901, dismissed the suit. The lower appellate court reversed the decree on the ground that the plaintiffs' *patti* not having been the subject of partition, the suit was maintainable in the civil court and remanded the case to the first court for disposal of the suit. The defendants appealed to the High Court.

Babu *Sital Prasad Ghose*, for the appellants, submitted that it was immaterial whether or not the plaintiffs had applied for partition. Section 233(k) of Act III of 1901 clearly barred the suit. He relied on *Jagannath v. Tirbeni Sahai* (1).

Munshi *Gokul Prasad*, for the respondents, contended that in partition proceedings the defendants' application was that the *pattis* which belonged to the applicants should be made into one mahal. The plaintiffs who owned a separate *patti* were not made parties to that application. This fact distinguishes the present case from the case in I. L. R., 31 All., 41. The land in dispute not having been comprised in the *pattis* which were the subject of partition, section 233(k) was not applicable. He relied on *Kishen Prasad v. Kadher Mal* (2).

Babu *Sital Prasad Ghose* was not called upon to reply.

KNOX and BANERJI J.J. :—This appeal arises out of a suit brought by Gokul Prasad and Musammatt Gangoli, plaintiffs respondents in this Court. They began by stating that in the mahal there was a separate *patti* of theirs, which had been in their proprietary possession, and that it had all along been included in a separate lot and had no connection with other *pattis*. In 1905 certain of the appellants who were owners of some *pattis* in the same mahal applied to the Revenue Court to have their

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pattis formed by partition into a single *patti*. The other *pattidars* made similar applications. The plaintiffs, however, abstained from the proceedings, as they were not interested in them, and took no part in them from beginning to end. Before the partition had been confirmed and when the lots were prepared, they found that a certain plot bearing No. 4 $\frac{1}{4}$, which was actually in the defendants' proprietary possession, had been included in the lot of the defendants, and plots Nos. 4 $\frac{3}{8}$ and 4 $\frac{5}{8}$ had remained in the plaintiffs' lot as before. After that the Court Amin made a mistake in the preparation of the map. He coloured plot 4 $\frac{1}{4}$ with the colour of the plaintiffs' lot and plots 4 $\frac{3}{8}$ and 4 $\frac{5}{8}$ with the colour of the defendants' lot. In October, 1908, as the various lots were pointed out on the spot, the plaintiffs became aware of this mistake. They then applied to the Revenue Court to have this mistake corrected, but their petition was struck off by the Collector on the 7th of June, 1909, with the remark that such a mistake could be rectified by a Civil Court. Hence the present suit for a declaration that the plaintiffs are in possession as proprietors and zamindars of plots 4 $\frac{3}{8}$ and 4 $\frac{5}{8}$, and that they are comprised in their lot and *patti* and that the defendants have no concern with these plots. They had also an alternative prayer for recovery of possession.

In the written statements, among other pleas, a plea was taken that the suit as brought could not be entertained by a Civil Court. The court of first instance accepted this plea and dismissed the suit, holding that section 233(*b*) of the Revenue Act was a clear bar. Before the lower appellate court, the plaintiffs contended that the partition proceedings could not bar the civil suit. That court recorded the following finding:—"The record of the partition proceeding which was sent for by this court shows that the appellants' *patti* was not the subject of partition, and therefore, with reference to the ruling in *Kishan Prasad v. Kadher Mal* (1), I find that the suit is cognizable by the Civil Court."

In appeal before us the contention is again raised that the suit is not cognizable by the Civil Court. We think that this contention is well founded. It is admitted that at the time

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

when partition was completed and was finally confirmed, the whole mahal was divided into separate *pattis*, and the plots in suit were taken out of the plaintiffs' *patti*, and one of them allotted to the defendants and the second to the *patti* of Jagannath. In place of these plots, plot $\frac{1}{2}$ was allotted to the plaintiffs' *patti*. This is a matter which is entirely within the jurisdiction of the Revenue Court, and by section 233(k) of Local Act III of 1901 no suit or other proceeding can be instituted in the Civil Court with respect to it. The case which has been relied upon by the lower appellate court is clearly distinguishable. In that case land belonging to a different mahal had been taken from the mahal and added to the mahal under partition. The case differs *toto coelo*. We decree the appeal, set aside the order of the court below, and restore the decree of the court of first instance with costs in all courts.

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Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Griffin.

DURGA DAT AND OTHERS (PLAINTIFFS) v. GITA AND OTHERS (DEFENDANTS).*

1911
February 1.

Hindu law—Hindu widow—Nature of estate held by two widows succeeding jointly—Power to partition.

Whatever limitations there may be upon the power of alienation of one of two Hindu widows succeeding as such to a life interest in their husband's estate, so long as the property remains undivided, there is nothing to prevent them effecting a partition of such estate. *Mussammatt Sundar v. Mussammatt Parbati* (1) and *Kanni Ammal v. Ammakannu Ammal* (2) followed. *Ram Piyari v. Mulchand* (3) distinguished. *Bhugwandeeri Doohey v. Myna Basu* (4) and *Gajapathi Nilamani v. Gajapathi Radhamani* (5) referred to.

THE facts of this case were as follows:—

One Bidya Ram died leaving two widows, Gita and Mulo. The two widows jointly succeeded to the property left by Bidya Ram. Mulo made a gift of her share in the property to the plaintiffs, Durga Dat and his Brother Lachman Prasad, on 7th February, 1908. (The plaintiffs made an application for mutation of

* Second Appeal No. 160 of 1910 from a decree of B. J. Dalal, District Judge of Shahjahanpur, dated the 6th of December, 1909, reversing a decree of Gopal Das Mukerji, Munsif of Bisauli, dated the 26th of August, 1909.

- (1) (1889) I. L. R., 16 I. A., 186; (3) (1884) I. L. R., 7 All., 114.
I. L. R. 12 All., 51.
(2) (1899) I. L. R., 23 Mad., 504. (4) (1867) 11 Moo. I. A., 487.
(5) (1877) I. L. R., 1 Mad., 291.