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and Hamir Singh of their exproprietary rights, unless we hold that mortgage operated as a sub-lease with effect from the date of the acquisition of exproprietary rights. Section 30 of the Act merely states that the interest of a sub-tenant ceases with the extinction of the interest of the tenant for whom he holds. The plaintiff does not in the present suit seek to enforce the terms of the contract between the appellant and Godha and Hamir. He puts them entirely on one side. Therefore we can find no provision in the law which enables him to enforce, as against the appellant, the contract between himself and the exproprietary tenants.

Unless he is entitled to recover this rent by some provision of the law, in the absence of a contract between the parties, or a decree of court, he is not entitled to recover it.

For these reasons we must hold that the suit fails. We allow the appeal. The suit will stand dismissed with costs in all courts.

Appeal allowed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

BHAGWATI PRASAD (PLAINTIFF) v. BHAGWATI PRASAD AND
OTHERS (DEFENDANTS)*.

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December, 10.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 111, 112, 233 (k)—Partition—Hindu law—Joint Hindu family—Minor—No necessity for minor to be specially represented in partition proceedings.

Where a partition of the property of a joint Hindu family in which one of the members was a minor was found to have been properly carried out with due regard to the interests of the minor, it was *held* to be no ground for upsetting the partition, were such a course possible having regard to section 233 (k) of the United Provinces Land Revenue Act, 1901, that the minor was not represented in the partition proceedings by a formally appointed guardian. In such circumstances a minor member of the family is suitably represented by the managing member or members.

THIS was a suit for a declaration that the plaintiff was not bound by certain partition proceedings. The facts are fully set forth in the judgement. Shortly they were as follows :—

The proceedings were instituted by the defendants against the plaintiff and other members of his family. The plaintiff was a minor when those proceedings were instituted. No guardian was formally appointed to represent the plaintiff, but the major

* Second Appeal No. 626 of 1911 from a decree of F. D. Simpson, District Judge of Gorakhpur, dated the 1st of May, 1911, reversing a decree of Harbandhan Lal, Additional Subordinate Judge of Gorakhpur, dated the 26th of November, 1910.

members of the family acting for themselves and the plaintiff arrived at an arrangement with the opposite party in accordance with which the partition proceedings were carried out. The plaintiff brought this suit to set aside these proceedings. The court of first instance decreed the suit, but the lower appellate court reversed the decree. The plaintiff appealed to the High Court.

Dr. *Tej Bahadur Sapru*, for the appellant:—

There was no formal appointment of a guardian for the appellant in the partition proceedings. Therefore the appellant cannot be held bound by the partition carried out by the Revenue Court. The minor might have been a member of a joint Hindu family, the managing member of which was made a party to the proceeding, but that did not make an express provision of the law, namely, that a minor must be represented by a *formally* appointed guardian in order to bind him, unnecessary and superfluous. As regards the question of the Civil Court's authority to question a partition carried out by a Revenue Court, it should be noted that what was challenged in this case was not the validity of the partition proceedings of the Revenue Court but the mode of distribution of the mahals which involved a question of proprietary title and as such was maintainable in a Civil Court.

The Hon'ble Dr. *Sundar Lal* (with whom Mr. *E. A. Howard*), for the respondents:—

There may have been some irregularity in not appointing a guardian to the minor in the Revenue Court during the course of the partition proceedings, but there are several circumstances in the present case which bind the minor, in spite of that technical defect. The minor was a member of a joint Hindu family, all the members of which, including the plaintiff appellant, were made parties to the partition proceedings. The interest of the minor was identical with that of the other members; no fraud was practised, nor was there even any allegation of it by the plaintiff, and the interest of the minor did not in any way suffer in carrying out the partition. Under these circumstances there is no doubt that the minor was bound by the partition proceedings. Moreover, a suit to set aside a partition proceeding is not a suit in which a question of proprietary title is raised and does not fall under the provisions of either section 41 or section 112 of the Land Revenue

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Act and therefore section 233 (b) of that Act will bar such a suit.

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Dr. *Tej Bahadur Sapru* was heard in reply.

TUDBALL and MUHAMMAD RAFIQ J.J. :—The facts out of which this appeal has arisen are as follows :—

The plaintiff, Bhagwati Prasad, together with his half brothers, Jokhu and Lachman, and his uncles Umrao and Ram Nath, and the widow of his deceased uncle Nandan, constituted a joint Hindu family. The family owned a share in mauza Dibaria Buzurg. The defendants, first party, Bhagwati Prasad No. II, minor, &c., were also co-sharers, and so also were the defendants, third party. These three groups of co-sharers cultivated their separate *sir* lands. The defendants, second party, are the plaintiffs' half brothers and uncles and aunt. The first set of defendants applied to the Collector under the Land Revenue Act for partition of their share into a separate mahal. The plaintiff was then a minor, and, as the names of all the members of the family were recorded in the khewat, his name was also recorded therein under the guardianship of his half brother, Lachman. There was no objection to the partition, nor is it denied even now that the parties to the partition were the owners in possession of their recorded shares. In the *wajib-ul-arz* there was recorded the express wish of the then co-sharers that at the time of partition, if it occurred in the future, the various co-sharers should be maintained in possession of the various lands which they then held. This is also in accordance with the provisions of the Land Revenue Act and it is a rule regularly followed in all partitions unless it is not possible to divide the mahal fairly and justly between the co-sharers, in which case the rule has perforce to be broken. Provision is made for this in the Act. In the partition proceeding there was an entry to the effect that the rule was to be followed. But apparently the defendants, first party, and the plaintiffs' brothers and uncles came to an agreement out of court and threw their *sir* lands into the hotchpot and the whole mahal was divided into shares. Fraud, collusion and dishonesty were alleged by the plaintiff in the present suit, against both his own relations and the first set of defendants, but he has utterly failed to prove these allegations, and the courts below have held against him on this point and it is not now put forward. It may

therefore be taken for granted that the partition was justly and fairly carried out, and it was completed and sanctioned by the Collector on the 30th of September, 1908. The plaintiff at that time, though a minor, was not far from his majority, for he instituted the present suit on 27th May, 1910, as being major and of full age. He attained his majority in fact on November 25th, 1908 (*vide* his plaint). In the course of the partition many plots of land which he and his family cultivated as *sir*, were placed in the mahal of the first defendants. In the course of the partition case the Revenue Court omitted to make any formal appointment of a guardian *ad litem* for the present plaintiff. The application for partition was made on the 19th of February, 1908. On the 2nd of April a petition was filed by the plaintiff's brothers and uncles to the effect that they had no objection. It was not signed by Lachman, but by Jokhu on his behalf and the plaintiff's name was omitted. On the 2nd of July, 1908, the agreement mentioned above was written and it was filed on the 3rd of July, 1908, and with it a mukhtarnamah signed with Lachman's name. Plaintiff's name was entered in this application (or agreement). Jokhu again appears to have signed for Lachman. On the same day Jokhu filed an application that the plaintiff was a co-sharer and his share should be entered in Lachman's patti. His name was then entered in all papers from which it had been omitted. After the partition lots had been drawn up the family apparently concluded that it was a mistake not to retain their *sir* plots in their own shares. Accordingly Umrao and Ramnath, the two uncles, and Jokhu filed a petition of objection on the 31st of August, 1908. This was disallowed. Thereupon Lachman and others appealed to the Commissioner and this was also disallowed. The partition was completed.

The present suit was brought by the plaintiff alleging—

(1) Fraud and dishonesty on the part of his own brothers and uncles with intent to ruin his interests.

(2) That though Lachman was nominated as a guardian *ad litem* the court did not formally appoint him.

(3) That he was unfit to act as guardian and not entitled to the post as the minor's mother was alive.

(4) That he did not, as a matter of fact, look after the minor's interests.

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(5) That the Revenue Court did not grant any sanction to the agreement in regard to the mode of partition of the lands and that the said partition had been detrimental to the minor's interests.

On these allegations he asked for a declaration that the partition was unlawful and void and that defendants, first party, had no right or share in the five anna, four pie share of the family and those plots of land which had been the *sir* and *khudkasht* of plaintiffs' family and which had been allotted to them (the defendants). In the alternative he asked to be put into possession of those specific plots. The court of first instance held that the plaintiff was entitled to maintain the suit in respect only to his own share and granted a declaration that the partition was not binding on him and that the defendants, first party, were not entitled to the possession of the plots (of *sir* and *khudkasht*) in dispute belonging to the plaintiff's share. It was further declared that the decree did not affect the rights of the defendants, first party, regarding so much of the lands in dispute as appertained to the share of the defendant, second party. This decree clearly was one which, if it were to have any effect, would really upset the whole partition. It did not even make the plaintiff restore to the other party those lands which he received in lieu of his *sir* and *khudkasht* plots in dispute. On appeal the District Judge dismissed the suit *in toto*. He was of opinion that the managing members of the joint family were parties to the partition, and as there was no fraud or collusion proved all members of the family were bound by it and could not go behind it, and that the present suit was one brought at their instigation to get behind the partition and to attain the object which they failed to attain in the Revenue Court by their objections and appeal. The plaintiff appeals.

In the beginning we have to point out—

- (1) that no fraud has been established;
- (2) that it has nowhere been shown that the partition has been made to the detriment of the plaintiff or that he has not received his fair share of the parent mahal;
- (3) that his objection to it is directed not to a question of proprietary title but merely to the mode in which the lands have been distributed;

(4) That the Revenue Court is not in any way subordinate to the Civil Court in respect to the mode of distribution of the land.

The suit must fail. Firstly section 233, clause (k), of the Land Revenue Act clearly states that no person shall institute any suit or other proceeding in the Civil Court with respect to the partition of mahals except as provided in sections 111 and 112 of the Act. The present suit does not fall under either of these two latter sections. Of course a person who was no party to a partition proceeding in the Revenue Court could hardly be held to be bound by such a partition, but the Civil Court, while giving him relief in such a case, could not go behind the partition and redistribute the land. It would have to take the new mahals as they were and give the plaintiff adequate relief. The plaintiff's case is that by reason of the omission of the Revenue Court to formally appoint a guardian he was really no party to the partition, and that, even if this formal defect be not fatal to the partition, his brother, Lachman, was unfit for the post and did not look after his interests and ought not to have been appointed in the presence of the plaintiff's mother. But whatever might otherwise have been the result of the Revenue Court's irregularity, there is in the present case a circumstance which is fatal to the plaintiff's case. His family was a joint family, *i.e.*, one legal entity and it was duly represented by the adult male members. The whole body of adult members was made a party to the proceeding. Their interests and the minor's interests were one and the same. There was no fraud, and nothing has been put before the Court to show that the interests of the family or the minor have in any way suffered. There has, therefore, been a partition fairly carried out between the family on one side and the other defendants on the other. The minor was duly represented either by Lachman or the managing member or members of the family. In regard to Lachman the plaintiff in his evidence stated :—" Lachman was master and did all my business after my father's death." We are therefore of opinion that, even though no guardian was formally appointed for the plaintiff in the Revenue Court, he was duly represented, and a partition fairly and honestly obtained against the managing members of the family is binding on him. We would note here that we allowed the plaintiff an

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opportunity of taking the matter of the partition on review to the Board of Revenue, the highest court of appeal and revision on the revenue side, so that any injustice might, if it existed, be set right. The Board has rejected his application and nothing has been shown to us which goes to prove that the partition was other than just and equitable.

In the circumstances, therefore, we hold that the suit was properly dismissed. We dismiss the appeal with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Tudball.

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December, 13.

RALLI BROTHERS (APPLICANTS) v. AMBIKA PRASAD (OPPOSITE PARTY).
Master and servant—Clerk engaged on a monthly salary—Relinquishment of employment without consent of master—Clerk not entitled to salary for broken portion of month in which he left his service.

Held that an office clerk engaged on a monthly salary is not entitled to any salary for the broken portion of a month in the course of which he leaves his service without the consent of his employer. Ridgeway v. Hungerford Market Company (1), Dhumeo Bahara v. Sevenoaks (2) and Ramji Manor v. Little (3) referred to.

ONE Ambika Prasad was a clerk in the service of Messrs. Ralli Brothers on a monthly salary of Rs. 50. He left his service in the middle of a month without the consent of his employers and thereafter sued the firm to recover his salary for the broken portion of the month in which he left. The court of Small Causes at Cawnpore gave him a decrec. Messrs. Ralli Brothers thereupon applied in revision to the High Court.

Mr. A. H. C. Hamilton, for the applicants.

The opposite party was not represented.

TUDBALL, J:—The opposite party to this application was a clerk in the employment of Ralli Brothers on a monthly salary of Rs. 50 per month. He left his service in the middle of the month without the consent of his employers, and he then brought the suit out of which this application has arisen to recover the salary for the broken portion of the month. He gave no previous

*Civil Revision No. 112 of 1912.

(1) (1835) 3 A. and E., 171. (2) (1886) L. L. R., 13 Calc., 80.

(3) (1873) 10 Bom. H.O. Rep., 57.