

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Banerjee.

DEBI SINGH AND OTHERS (DEFENDANTS) v. SHEO LALL SINGH AND OTHERS (PLAINTIFFS).*

1889
Jan. 21st.

Partition—Jurisdiction of Civil Court—Partition by Civil Court of a portion of a revenue-paying estate—Civil Procedure Code (Act XIV of 1882), s. 235—Revenue-paying estate, partition of, into several revenue-paying estates.

The meaning of s. 265 of the Code of Civil Procedure is that where a revenue-paying estate has to be partitioned into several revenue-paying estates, such partition must be carried out by the Collector.

Zahrin v. Gowri Sunkar (1) approved.

THIS was a suit brought in the Court of the Subordinate Judge of Gya, for the partition of a certain village which formed a portion of a revenue-paying estate. The plaintiffs, Sheo Lall Singh and Punit Singh, held 5 annas and 6 pie in proprietary right, and 4 annas as mokuraridars under the defendants.

The defendants, Nos. 1 to 7, were proprietors of the remaining 6 annas 6 pie share in this mouzah. The plaintiffs asked in their plaint that a single plot of 9 annas 6 pie might be allotted to them.

The defendants contended that the suit would not lie, and that the partition ought to be made by the Collector; that the plaintiffs as mokuraridars were not entitled to a partition of their mokurari share as against them; and also took exception to the mode of allotment of the properties asked for by the plaintiffs.

The Subordinate Judge held that the suit was maintainable by a Civil Court; that the plaintiffs were entitled to a partition of the lands held by them as mokuraridars; and he therefore decided that the plaintiffs were entitled to partition of their 5 annas 6 pie milkat share, and of the 4 annas held by them as mokuraridars and directed the same to be made by the Civil Court Amin.

The defendants appealed to the High Court on the ground that the decree should be given effect to by the Collector and not by the Civil Court Amin.

* Appeal from Original Decree No. 254 of 1887, against the decree of Baboo Kali Prosunno Mukerjee, Subordinate Judge of Gya, dated the 24th of August 1887.

(1) I. L. R., 15 Cal., 199.

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Mr. *C. D. Linton*, for the appellants, submitted that the decisions of this Court, as well as of the Courts of the other Presidencies, show that Civil Courts have jurisdiction to determine a party's right to have his share divided, and to make a decree accordingly, but the power to make a partition of lands paying revenue to Government was restricted to the Collector. In other words, s. 265 of the Code of Civil Procedure, coupled with s. 29 of the Partition Act (Bengal Act VIII of 1876), placed the execution of the decree entirely in the hands of the Collector, and in support of his contention referred to s. 396 of the Code of Civil Procedure, which provided for the partition of immoveable property not paying revenue to Government, and cited the following cases:—

Chunder Nath Nundi v. Hur Narain Deb (1); *Damoodur Misser v. Senabutty Misrain* (2); *Badri Roy v. Bhugwat Narain Dobby* (3); *Zahrun v. Gowri Sunkar* (4); *Ramanuja v. Virappa* (5); *Parbhudas Lalhmidas v. Shankarbai* (6); and *Dev Gopal Savant v. Vasudev Vithal Savant* (7).

Mr. *R. E. Twidale*, Baboo *Golap Chund Sircar* and Baboo *Nil Kant Sahai*, for the respondents.

The judgment of the Court (PETHERAM, C.J., and BANERJEE, J.,) was delivered by

PETHERAM, C.J.—This is an appeal from a decision of the Subordinate Judge of Gya, in a suit brought by the plaintiffs against the defendants to partition the plots of land, contained in a revenue-paying estate among the persons entitled to the estate, but there is no claim in the plaint to have the estate or the revenue payable to Government partitioned, in the sense that it should be turned into several revenue-paying estates.

The Subordinate Judge has decreed the suit, and has directed that the Civil Court Amin shall give effect to it, and the only ground of appeal here is, not that the decree is wrong, but that the decree must be given effect to, not by the Civil Court Amin,

(1) I. L. R., 7 Calc., 153.

(4) I. L. R., 15 Cal., 198.

(2) I. L. R., 8 Calc., 537.

(5) I. L. R., 6 Mad., 90.

(3) I. L. R., 8 Calc., 649.

(6) I. L. R., 11 Bom., 662.

(7) I. L. R., 12 Bom., 371.

but by the Collector of the district, and various cases have been cited before us in support of that view. It is said that, by s. 265 of the Code of Civil Procedure, whenever the estate, in respect of which partition has taken place, is a revenue-paying estate, that partition must be carried out by the Collector. But it seems to us that the meaning of that section is, that where a revenue-paying estate has to be partitioned into several revenue-paying estates, that partition must be carried out by the Collector, because the revenue is affected, and it is for the Collector to say how much revenue shall be assessed upon each portion of the estate, so that there may be a proper security for that revenue, and we think that that is the view which was intended to be taken by Mr. Justice Prinsep and Mr. Justice Pigot in the case of *Zaherun v. Gowri Sunkar* (1).

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In that case, the learned Judges say—"S. 265 of the Code of Civil Procedure of 1882, which is generally a re-enactment of s. 225 of the Act of 1859, evidently contemplates the existence of the jurisdiction of the Civil Courts to try suits for partition of estates, or for the separate possession of the share of an undivided estate paying revenue to Government, but at the same time it leaves it to the Collector only to give due effect to any order passed by a decree of a Civil Court." And then they go on to say,—“The effect of s. 29 of the Butwarrah Act, as we understand it, is, that the rights of the parties as between themselves in respect to any portion of the estate may be determined by the Civil Court, but that any decree of the Civil Court will not affect the joint liability of the sharers in respect to the payment of the entire revenue assessed on the estate until the Collector has taken proceedings in accordance with that Act.”

It seems to us that the meaning of the learned Judges in that case was to say, that the Civil Courts might deal with the matter and might give effect to their decisions, so long as they did not attempt to affect the joint liabilities of the sharers in respect of the whole estate as it stood before. That decision we think does not differ from the various decisions which have

(1) I. L. R., 15 Calc., 198.

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been cited before us, in which it seems to us that the learned Judges, when speaking of the partition of revenue-paying estates were speaking of the partition of such estates into several revenue-paying estates. That is a totally different thing from the partition of the lands within an estate as between the sharers leaving the whole estate liable for the whole revenue, which is the case before us.

For these reasons we think that this case is concluded by the case of *Zahrin v. Gowri Sunkar* (1) which I have cited, and with which we entirely agree, and this appeal must be dismissed with costs.

T. A. P.

Appeal dismissed.

CRIMINAL REVISION.

Before Mr. Justice Pigot and Mr. Justice Macpherson.

1889
January 14.

GANOURI LAL DAS (AND OTHERS) v. THE QUEEN-EMPRESS.*

Rioting—Unlawful Assembly—Right of Private defence of property—Penal Code (Act XLV of 1860), ss. 97, 103, 104, 105, 141 and 147.

A party of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of *M* for the purpose of either repairing or erecting a *bund* across it to cause the water to flow down a channel on to the lands of their master *T*. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not during the subsequent occurrence use force. Having arrived at the spot about 10 A.M. they proceeded to work at the *bund* until the afternoon. At about 4 P.M. a body of men, consisting of about 1,200 in all, many of them armed with *lathies* and headed by the prisoners, who were servants of *M*, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked *T*'s men, some five of whom were more or less severely wounded with the *lathies*.

The occurrence resulted in the conviction of some of *M*'s servants for rioting under s. 147 of the Penal Code.

* Criminal Revision No. 405 of 1888, against the order passed by C. A. Wilkins, Esq., Sessions Judge of Bhagulpore, dated the 6th of November 1888, affirming the order passed by Baboo Poorna Chunder Mitter, Deputy Magistrate of Bhagulpore, dated the 24th of September 1888.