

FULL BENCH.

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July, 17

Before Sir George Knox, Acting Chief Justice, Justice Sir Pramada Charan Banerji and Mr. Justice Tudball.

SARUP LAL, (DEFENDANT) v. LALA AND OTHERS (PLAINTIFFS) AND
PIARI LAL (DEFENDANT).*

Act (Local) No. III of 1901, (United Provinces Land Revenue Act) section 118—
Partition—Co-sharers—Effect of order allotting to one co-sharer land upon
which are standing buildings belonging to another co-sharer.

Where a partition has been effected under the provisions of the United Provinces Land Revenue Act, 1901, and the site of the house of one co-sharer has been allotted to the share of another co-sharer, the presumption is the owner of the house was to retain possession of the house. The mere fact that ground rent has not been assessed cannot deprive the owner of the house of his right to it. *Iswar Prasad v. Jagannath Singh* (1) followed. *Nandan Pat Tewari v. Radha Kishun Kalwar* (2) distinguished.

THE facts of this case appear from the following order referring the appeal to a division Bench :—

MUHAMMAD RAFIQ, J.—The parties to this appeal are co-sharers. The dispute relates to a plot of land on which a house stands and which, at the time of partition in 1908, was allotted to the share of the vendor of the defendant. The plaintiffs respondents instituted the suit out of which this appeal has arisen for recovery of possession of the house on the allegation that they had been wrongfully dispossessed from it by the defendant appellant some time in January, 1915. The latter resisted the suit on the ground, among others, that the plot on which the house stands had been allotted to his vendor and that the plaintiffs respondents having failed to take steps under section 118 of the Revenue Act, they could not claim the house. The first court decreed the claim and on appeal its decree was affirmed. The main contention on behalf of the defendant appellant in this appeal is that the respondents having failed to take steps under section 118 of the Revenue Act, they are not entitled to the house in suit. For the appellant reliance is placed upon *Nandan Pat Tewari v. Radha Kishun Kalwar* (2). For the respondents reliance is placed upon *Iswar Prasad v. Jagannath Singh* (1),

* Second Appeal No. 1399 of 1915, from a decree of L. Johnston, District Judge of Meerut, dated the 21st of August, 1915, confirming a decree of Vishun Ram Mehta, Munsif of Meerut, dated the 14th of May, 1915.

(1) Weekly Notes, 1906, p. 194. (2) (1910) 5 Indian Cases, 664.

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and *Ashiq Husain v. Muhammad Jan* (1). According to the contention of the parties there is apparently some difference in the case-law upon the subject. Moreover, it is suggested that the case is likely to go in Letters Patent appeal. Considering the circumstances of the case, I think it advisable to direct that this case be laid before a Bench of two judges for disposal.

The case was then heard by a Bench of two Judges who passed the following order :—

TUDBALL and MUHAMMAD RAFIQ, JJ. :—In view of the fact that the decisions of this High Court have been by no means uniform, and that there is a decision of a Bench of this Court of two Judges reported in 5 Indian Cases, page 664, with which we find it very difficult, if not impossible, to agree, we think that this case should be referred to a larger Bench. We therefore direct that the record be laid before the Chief Justice for orders.

The case then came up for hearing before a Full Bench consisting of KNOX, A. C. J., and BANERJI, and TUDBALL, JJ.

Babu Sheo Dihal Siphra, for the appellant :—

The language of section 118 of the United Provinces Land Revenue Act (III of 1901), shows that it is only on condition of the occupier of the house paying a reasonable ground rent to the owner of the site on which the house stands that the former can be allowed to retain possession of the site with the house thereon ; and further, that the extent of such site and the amount of the rent are to be fixed by the Collector. This has to be arranged and settled at the time of the partition. The section makes it clear that the right to retain possession of the site, without which the right to possession of the house cannot be enjoyed, is dependent upon the said condition being carried out and upon the rent and the limits of the site being fixed by the Collector at the time of the partition. The right does not mature if these things are not done.

Prima facie the person to whom a piece of land is allotted at partition without any condition or reservation being made, is entitled to full and exclusive possession thereof, notwithstanding any building which may be standing on it. If the owner of the building claims a right to retain possession of the house and of the land

on which it stands it is for him to show that he has taken proper steps to mature and safeguard his right at the time when the land was allotted to another person. It was, therefore, for the plaintiffs in this case to have offered, at the time of the partition, to pay rent and to have taken steps under section 118 to get a rent fixed by the Collector and to have thereby secured their right to continue in possession of the house. They failed to do anything of the kind. If that had been done, the partition papers would have mentioned the fact and the plaintiffs could have shown that the defendant's ownership of the site was subject to the condition or reservation that the plaintiffs were to continue in possession of the house on payment of so much as rent. Having failed to do so, they have lost their right and cannot claim to obtain possession of the house and, necessarily, of the site as well; *Nandan Pat Tewari v. Radha Kishun Kalwar* (1), *Bhure Lal v. Jagan Nath* (2), *Ramjas Mal v. Zaharya Singh* (3), S. A. No. 1028 of 1913, decided on the 23rd of June, 1914, *per* RARIQ, J. (unreported). The plaintiffs must make out their title, if any, to dispossess the defendant of land which forms part of his *mahal* and of which he is in possession as owner. The plaintiffs' suit is in contravention of section 233 (*k*) of the Land Revenue Act. Parties are bound by the partition proceedings and cannot go behind them. Those proceedings record that the land was given to the defendant without any reservation. The case of *Iswar Prasad v. Jagarnath Singh* (4) was discussed in the case in 26 Indian Cases, 933, cited above, and is distinguishable from the present case.

Mr. A. H. C. Hamilton, for the respondents, was not called upon.

BANERJI, J.—This appeal arises out of a suit brought by the plaintiffs for possession of a house. The house stood on a plot of land which, under a partition which took place between the defendants and the predecessors in title of the plaintiffs, was allotted to the share of the former. The defendants dispossessed the plaintiffs from the house and thereupon the present suit was brought for recovery of possession of the house. The court of first

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(1) (1910) 5 Indian Cases, 664.

(3) (1915) 28 Indian Cases, 358.

(2) (1915) 26 Indian Cases, 933.

(4) Weekly Notes, 1906, p. 194.

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instance decreed the claim and that decree was affirmed by the lower appellate court. The defendants have preferred this appeal, and their contention is that under section 118 of the Land Revenue Act, the plaintiffs are not entitled to recover possession, inasmuch as they did not get rent assessed on the site at the time of the partition. In my judgement the provisions of section 118, so far from supporting the contention of the defendants appellants, are against them. That section provides that, "if in making a partition, it is necessary to include in the portion allotted to one co-sharer the land occupied by a dwelling-house or other building in the possession of another co-sharer, the latter shall be allowed to retain it with the buildings thereon, on condition of his paying for it a reasonable ground rent to the co-sharer in whose portion it may be included. The limits of such land and the rent to be paid for it shall be fixed by the Collector." It is clear from these provisions that if the site of a house occupied by a co-sharer be allotted to the share of another co-sharer that fact alone would not deprive the owner of the house from retaining it with the building thereon. His liability would be to pay rent for the site on which the building stands. The presumption would be that where a partition has been effected and the site of the house of one co-sharer has been allotted to the share of another co-sharer the owner of the house is to retain possession of the house. In the present case the same presumption arises. The mere fact that rent was not assessed cannot deprive the owner of the house of his right to it. There is nothing to show that the house was not reserved to the plaintiffs respondents. In the absence of any evidence to the contrary the presumption will be that the law was complied with. Therefore the plaintiffs are the owners of the house in dispute and the defendants have no right to dispossess them. Reliance has been placed on a decision of a Bench of this Court in *Nandan Pat Tewari v. Radha Kishun Kalwar* (1), to which I was a party. I think the facts of that case are distinguishable from those of the present. In that case there seems to have been a clear non-reservation of the ownership of the house and furthermore the building had been demolished when the appeal was decided. The case of *Iswar Prasad v. Jagarnath Singh* (2),

(1) (1910) 5 Indian Cases, 664.

(2) Weekly Notes, 1906, p. 194.

seems to be more in point. In my judgement the decree of the lower appellate court is right and I would dismiss this appeal.

KNOX, A. C. J.—I agree and have nothing further to add.

TUDBALL, J.—I agree.

BY THE COURT.—The order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Figgott and Mr. Justice Walsh.

TAPSI SINGH AND OTHERS (PLAINTIFFS) v. HARDEO SINGH AND ANOTHER (DEFENDANTS).*

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Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 203 to 207—Act (Local) No. II of 1901 (Agra Tenancy Act), section 95—Arbitration—Decision of Revenue Court based on award—Dispute between rival tenants as to possession of land—Suit for possession—Jurisdiction—Civil and Revenue Courts.

Held that section 207 of the United Provinces Land Revenue Act, 1901, does not bar a separate suit on title, independently of the decision of the Revenue Court based on the award, to recover possession of property which has been the subject of arbitration proceedings under sections 203 to 206 of the Act. *Girdhari Chaube v. Ram Baran Misir* (1) approved and followed.

Held further, that a suit between two rival tenants of adjoining holdings to determine the question whether a certain parcel of land appertains to the holding of the one or of the other is cognizable by the Civil Court. *Bhup v. Ram Lal* (2) and *Jagannath v. Ajudhia Singh* (3) referred to.

THIS was a suit between rival claimants to the possession of two parcels of land as tenants. Previously to the suit the parties had taken two proceedings before the Revenue Courts. The plaintiffs applied for correction of the village papers, which showed the defendants as sub-tenants of the plaintiffs. The defendants on their part applied to the Revenue Court to fix boundary pillars between the parcels of land in the actual possession of the parties respectively. The dispute between the parties was referred

* Second Appeal No. 392 of 1916, from a decree of Ram Prasad, District Judge, Ghazipur, dated the 30th of November, 1915, confirming a decree of Ram Saran Das Taroi, Additional Munsif of Ballia, dated the 19th of April, 1915.

(1) (1916) 14 A. L. J., 85.

(2) 1911) I. L. R., 33 All., 795.

(3) (1912) I. L. R., 35 All., 14.