

APPELLATE CIVIL

Before Justice Sir George Knox and Justice Sir Pramada Charan Banerji.

LAL BIHARI AND OTHERS (PLAINTIFFS) v. PARKALI KUNWAR AND
OTHERS (DEFENDANTS).*

1920
January, 2.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), section 233 (k)—Civil Procedure Code (1908), section 11—Res judicata—Joint mahal formed on partition—Suit by one co-sharer against the other for exclusive possession of entire mahal.

A and B applied jointly, as against the other co-sharers, to have certain revenue-paying property made into a joint mahal in their names, and this was done. Thereafter A sued B on title for exclusive possession of the entire mahal.

Held that this suit was not barred, either by the principle of *res judicata* or by section 233 (k) of the United Provinces Land Revenue Act, 1901. In the partition proceedings no question of title as between the present plaintiff and defendant had been raised, and in his suit the plaintiff did not seek to alter the constitution of the mahal as it had been formed by the revenue authorities.

THIS was an appeal under section 10 of the Letters Patent from the judgment of a single Judge of the Court. The facts of the case are sufficiently set forth in the judgment of BANERJI, J.

Dr. Surendro Nath Sen, for the appellants.

The Hon'ble Dr. Tej Bahadur Sapru and Mr. Sham Nath Mushran, for the respondents.

BANERJI, J. :—The suit out of which this appeal has arisen was brought by one Sitlu Rai for establishment of his right to and possession of certain immovable property consisting of shares in sixteen villages, on the allegation that he was the reversioner of the last male owner of that property and that Musammât Parkali Kunwar, the principal defendant, had no interest in that property. The lower appellate court found the facts in favour of the plaintiff and decreed his claim in respect of three villages. As regards the remaining villages the court dismissed the claim on the ground that in its opinion section 11 of the Code of Civil Procedure barred it. The way in which the section was applied to the case was this. The name of the defendant Musammât Parkali had been entered in the revenue papers along with the name of the plaintiff. The plaintiff and the Musammât jointly applied for partition of the villages in respect of which the claim

* Appeal No. 23 of 1917, under section 10 of the Letters Patent.

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has been dismissed and the shares recorded in their names were formed into a separate mahal. The court below has held that, as both of them had applied for partition and obtained partition, the matter became *res judicata* in consequence of the order for partition passed by the Revenue Court. This decision of the lower appellate court was affirmed by a learned Judge of this Court in second appeal.

During the pendency of the appeal Sitlu Rai died. A question was raised before us whether the present appellants were legal representatives of Sitlu Rai and were entitled to maintain the appeal. An issue was referred to the court below on the point and it has been found that they are the legal representatives of Sitlu Rai. This finding has not been questioned.

It is urged on behalf of the appellants that the court below has erred in holding that section 11 of the Code of Civil Procedure is a bar to the claim as regards the villages in respect of which the claim has been dismissed. This contention seems to be valid. In the Revenue Court when an application for partition was made no question of title was raised and no question of title was determined, therefore the mere fact of a partition having been effected by the Revenue Court does not amount to a decision of the question of title by that court which might have the effect of *res judicata* upon the question of title to the property as between Sitlu Rai and the defendant Musammat who were arrayed on the same side as applicants for partition.

The only other question to be considered is whether the present suit offends against the provisions of section 233 (b) of the Land Revenue Act. No papers relating to the partition were produced in this case, but the plaintiff in his deposition admitted that an application for partition had been made by him and Musammat Parkali Kunwar jointly on the one side as against other co-sharers, and a separate mahal was formed. The object of the present suit is not to take out of the other mahal any land which has been allotted to that mahal or to interfere with the share of Government revenue which has been declared to be payable by each mahal, but what the plaintiff seeks is that he should be declared to be the owner of the mahal which has been jointly recorded as a separate mahal. The case, therefore, does

not seem to be a case to which section 233 (k) applies, the matter not being a matter relating to the union or separation of mahals. The mahals as formed by the revenue authorities would remain as they are. The only claim of the plaintiff is that he should be declared to be the owner of one of the mahals formed by the revenue authorities as a separate mahal. As has been already stated, the finding of the lower appellate court is that title to the property is in the plaintiff. As section 233 (k) of the Land Revenue Act or section 11 of the Code of Civil Procedure is no bar to the present suit, the plaintiffs' claim ought to prevail and the decree of the lower appellate court ought to be reversed to this extent that the claim of the plaintiff should be decreed in respect of all the property claimed by him.

KNOX, J.—I agree

BY THE COURT.—The order of the Court is that the appeal be allowed, and the decree of this Court and of the two lower courts be reversed, and in lieu thereof a decree be made in favour of the plaintiff decreeing the whole of his claim with costs in all courts.

Appeal decreed.

MISCELLANEOUS CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

MURLI DHAR (PETITIONER) v BABU RAM AND OTHERS (OPPOSITE PARTIES).
Act (Local) No. II of 1901 (Agra Tenancy Act), section 159—"Co-sharer"—Owner of specific plots of land assessed to revenue—Suit by lambardar to recover revenue paid on behalf of such person.

The word "co-sharer" in section 159 of the Agra Tenancy Act means a person holding proprietary rights in the mahal, who is jointly and severally liable for land-revenue with other proprietors in the mahal and whose revenue is payable through the lambardar under the provisions of section 144 of the United Provinces Land Revenue Act, 1901.

THIS was a reference made by the Collector of Etah under section 195 of the Agra Tenancy Act, 1901. The suit before him was a suit by a lambardar to recover from the defendants payments made by the plaintiff of Government revenue, for the payment of which, he asserted, the defendants were really liable.

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