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transaction. They have then held that on the facts alleged the respondents were not legally liable for any damages and that the suit ought to have been filed against the receiver. In this view the courts below have dismissed the suit without going into the other facts or the question of actual damages. It is urged on appeal that the decision of the court below on the point of law which is raised is erroneous and should be set aside. In view of the decision of this Court in *Abdul Rahim v. Sital Prasad* (1) it is clear that the decision of the court below on the question of law is incorrect. The case mentioned above is parallel and exactly fits the facts of the present case. It is unnecessary for us to go any further into this point, as the matter is covered by a decision of a Divisional Bench of this Court. The case must, therefore, go back for decision on its merits. There are several questions of fact into which the court will have to go. We, therefore, allow the appeal, set aside the decree of the court below and remand the case to the court of first instance through the lower appellate court with directions to re-admit the suit on its original number and to proceed to hear and decide it according to law. The costs of this appeal and those of the courts below will be costs in the cause and will abide the result.

*Appeal allowed and cause remanded.*

*Before Mr. Justice Walsh and Mr. Justice Ryves.*

RAMTU LAL AND OTHERS (DEPENDANTS) v. BALDEO SAHAI  
AND OTHERS (PLAINTIFFS).\*

*Act (Local) No. III of 1931 (United Provinces Land Revenue Act), sections 106, 233(k)—Partition of isolated plot in abadi—Owners not co-sharers—Civil and Revenue Courts—Jurisdiction.*

*Held* that a suit for partition of an isolated plot in the *abadi* of a village, the parties not being co-sharers in the mahal but merely the purchasers of the plot from the zamindars, lies in the Civil Court and not in the Revenue Court. *Ram Ratan v. Mumtaz Ahmad* (2) followed. *Ram Dayal v. Megu Lal* (3) referred to. *Narain Das v. Bhup Narain* (4) distinguished.

THE facts of this case sufficiently appear from the judgment of the Court.

\* First Appeal No. 154 of 1919, from an order of Piarey Lal Chaturvedi, Second Additional Subordinate Judge of Meerut, dated the 30th of April, 1919.

(1) (1919) I. L. R., 41 All., 658.

(3) (1884) I. L. R., 6 All., 452, (454)

(2) (1912) 16 Indian Cases, 876.

(4) (1909) I. L. R., 31 All., 330.

Munshi *Bhagwati Shankar*, for the appellants.

Mr. *Nihal Chand*, for the respondents.

WALSH and RYVES, JJ.:—This is an appeal from an order of remand. The plaintiffs brought this suit in the court of the Munsif of Kairana alleging that they and the defendants were joint owners of an isolated plot in the *abadi* of a village, which they had purchased from the zamindars, and asked for partition of the plot. Among other defences it was pleaded that the Civil Court had no jurisdiction. The learned Munsif held that the Civil Court had no jurisdiction and the court dismissed the suit with costs. This order, it seems to us, was clearly wrong. It should have ordered the plaint to be returned to the plaintiffs for presentation to the proper court. The plaintiffs appealed, and the learned District Judge allowed the appeal and remanded the case for decision on the merits. In appeal before us it is urged that the decision of the Munsif was correct as to the jurisdiction of the Civil Court and it is urged that section 233(b) of the Land Revenue Act bars the suit. In our opinion that section has no application whatever to the facts of this particular case. The parties to this suit are not co-sharers in the mahal, much less are they recorded co-sharers. It seems to us that they could not ask for partition of this plot of land under any of the provisions of the Land Revenue Act, and we doubt whether the partition which the plaintiffs seek could properly be included in the definition of “imperfect” or “perfect partition” given in section 106 of that Act, for the reasons given in the judgment in the case of *Ram Dayal v. Megu Lal* (1). In our opinion this case is on all fours with that of *Ram Ratan v. Mumtaz Ahmad* (2). Stress has been laid by the learned vakil for the appellants on the case of *Nurain Das v. Bhup Narain* (3), but a perusal of the facts shows that that case is not in point. There a particular village was divided into two mahals in 1867, with the result that the plaintiffs and defendants became joint owners of one of the mahals, whereas the defendants became the sole owners of the second mahal. The plaintiffs brought a suit in the Civil Court claiming partition of a particular *dera* which was situated

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(1) (1834) I. L. R., 6 All., 452 (454). (2) (1912) 16 Indian Cases, 876.

(3) (1909) I. L. R., 31 All., 330.

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in the new second mahal exclusively owned, after the partition, by the defendants. This Court held that the Civil Court had no jurisdiction to partition the *dera*, because admittedly the suit involved partition also of the site on which the *dera* stood and that it was in fact re-opening the partition of 1867, and that there was a remedy open to the plaintiffs in the Revenue Courts, namely to assess the ground rent of the premises occupied by the defendants. In our opinion, therefore, that case has no application. We think that the decision of the court below was correct and we dismiss the appeal with costs, but the costs of the lower appellate court and of the first court will abide the result. The third ground of appeal has not been argued and has been definitely abandoned for good reasons.

*Appeal dismissed.*

*Before Mr. Justice Walsh and Mr. Justice Ryves.*

ABDUL SHAKUR (PLAINTIFF) v. MUHAMMAD YUSUF (DEFENDANT) AND HAFIZ GHEDDA SHAH (PLAINTIFF).\*

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*Act No. IX of 1899 (Indian Arbitration Act) — Reference to two arbitrators and an umpire — Subsequent addition by consent of parties of other arbitrators — Objection raised after the pronouncement of the award to the appointment of additional arbitrators — Estoppel.*

A reference to arbitration was made under Act No. IX of 1899. The reference was to two arbitrators and an umpire. Subsequently the parties agreed to appoint two more arbitrators on either side. The six arbitrators and the umpire proceeded with the arbitration and pronounced a unanimous award. One party then applied for the award to be filed and the other party took objection, *inter alia*, to the number of the arbitrators.

*Held* that, though either side might have objected in the first instance to the appointment of additional arbitrators, it was too late to do so when they had all along acquiesced in the appointment and after the arbitrators had pronounced their award.

THIS was an appeal from an order of the District Judge of Cawnpore refusing to file an award made under the provisions of the Indian Arbitration Act, 1899.

The facts of the case are fully set forth in the judgment of the Court.

Maulvi Iqbal Ahmad, for the appellant.

Saiyid Raza Ali, and Babu Piari Lal Banerji, for the respondents.

\* First Appeal No. 143 of 1920 from an order of L. S. White, District Judge of Cawnpore, dated                      of July, 1920.