the third mortgage had vanished and had been swallowed up in satisfying, partly, the claims of the first two mortgages. There remains nothing that could be sold under the third decree, and therefore nothing in these three villages which could possibly contribute towards the plaintiff's claim. We think that the decision of the court below on this point is wrong and we, therefore, allow this appeal ; so far as that decree directs that any portion of the sum decreed to the plaintiff shall be recoverable by the sale of these three villages, it is set aside. The suit as against the present appellants will therefore stand dismissed. They will have their costs in both courts.

Appeal decreed.

Before Mr. Justice Tudball and Mr. Justice Kanhaiya Lal.

MAHMUD JAHAN BEGAM (DEFENDANT) *v.* GOBIND RAM AND OTHERS (PLAINTIFFS).*

Act (Local) No III of 1901 (*United Provinces Land Revenue Act*), *section* 4—*Mahal—Partition—Uncultivable land—Jurisdiction—Civil and Revenue Courts.*

Land, such as roadways, uncultivated plots, and even *abadi* sites of villages, are all within the boundaries of a mahal, although no revenue may be derived from them. Thus land forming the site of a *parao*, but bearing a khasra and khata number in the revenue records must be considered as part of the mahal in which it is situated and can only be partitioned by a Court of Revenue.

THE facts of this case are fully stated in the judgment of the Court.

Maulvi *Iqbal Ahmad*, for the appellant.

Mr. *B. E. O'Conor*, for the respondents.

TUDBALL and KANHAIYA LAL, JJ. :—This is an appeal by one defendant out of a large number of parties to a partition suit instituted in the Civil Court. Gobind Ram, Hari Ram and Anand Ram sued for partition of their shares in certain properties claiming a three-fifths share therein. The property consisted of house property and some zamindari and other miscellaneous properties. Among the items of properties which they sought to divide were three items, namely khata khewat No. 35, khata khewat No. 65 and khata khewat No. 66 in qasba Meerut.

* First Appeal No. 363 of 1917, from a decree of Man Mohan Sanyal, Additional Subordinate Judge of Meerut, dated the 30th of April, 1917.

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While the suit was pending Anand Ram died and was succeeded by his two daughters, Musammat Bhagwanti and Musammat Sita. A preliminary decree for partition was passed on the 17th of September, 1913, under which the three plaintiffs were held entitled only to a one-fifth share and not to the three-fifths that they claimed. While the suit was pending, *i.e.*, on the 14th of February, 1912, Hari Ram and Anand Ram sold to one Ram Saran Das a two-fifths share in khata khewats Nos. 35, 65 and 66 which they claimed in the suit. This of course was prior to the preliminary decree. On the 20th of February, 1912, Gobind Ram sold his one-fifth share that is claimed in the same three properties to Ram Chandar Sahai. On the 15th of August, 1912, Ram Saran transferred to Ram Chandar Sahai the rights and interests that he had acquired from Hari Ram and Anand Ram on the 14th of February 1912. In this way Ram Chandar Sahai purported to have acquired the whole three-fifths share claimed by Gobind Ram, Hari Ram and Anand Ram in the three khatas mentioned. On the 21st of February, 1914, *i.e.*, after the preliminary decree, Ram Chandar Sahai sold to Kalyan Singh all the interests that he had acquired in these three khatas. He purported to sell a three-fifths share therein. On the 26th of March, 1917, Kalyan Singh transferred his rights and interests to the present appellant, Musammat Mahmud Jahan Begam. In his sale-deed he sets forth all the previous transfers made by Gobind Ram, Hari Ram and Anand Ram of a three-fifths share; the fact that they have been held to be owners only of a one-fifth share was set out plainly and simply and also that he transferred his interests to the present appellant. Up to that time no final decree had been prepared. The preliminary decree came up to this Court on appeal, where it was upheld, and that no doubt explains the delay in the preparation of the final decree. The present appellant was made a party to the suit on the 10th of April, 1917. On the 20th of April, 1917, all the other persons who were parties to the suit filed a petition of compromise in the court below in respect to what they considered as the non-zamindari property setting forth certain lots and asking that those lots might be decreed to those persons to whom they had been allotted by the compromise. As for the zamindari

property it was held that it could only be divided by the Revenue Court under the terms of the Land Revenue Act. Mahmud Jahan Begam was no party to that compromise and if that compromise had dealt only with the property which was apart from the share acquired by her in khata khewats Nos. 35, 65 and 66, then she was not a necessary party to it. Her rights and interests were divisible by a partition in the Revenue Court. Mahmud Jahan Begam raised at least two objections with which we are concerned in this appeal. An examination of the plaint will show that there are attached to that plaint two or three lists of property. List A was a detail of immovable non-zamindari property, item 10 of which was a *parao* or an encamping ground together with thatched shops, for the sale of chaff and fuel, situated in the city of Meerut bounded as below. In list B item No. 8 was 5 bighas 12 biswas *pukhta* of land bearing a *jama* of Rs. 65, entered in the khewat as a khata khewat No. 65 situate in the resumed Lakhiraj mahal in qasba Meerut, district Meerut. Mahmud Jahan Begam's first plea was that this *parao* is part and parcel of khata khewat No. 65, that the land thereof could not be divided by the Civil Court as it was part of a mahal, that it was not, therefore, divisible under the compromise and that she was entitled to a one-fifth share therein. The court below held that the *parao* not being assessed to Government revenue was divisible by the Civil Court and not by the Revenue Court, and secondly that Mahmud Jahan Begam had acquired no share in the *parao* under the sale-deeds which we have mentioned above.

The lower court's finding, on both these points have been contested before us. So far as the liability of the site of the *parao* to be divided by the Civil Court is concerned we have to see whether or not it is a part and parcel of a mahal as defined in the Land Revenue Act. The evidence of the patwari, Ishwari Prasad, is to the effect that the *parao* has a khasra No. 953 and that it is included in the khata khewat No. 65. He says that this *parao* has not been assessed to revenue and the rest of the khata khewat No. 65 is assessed to revenue. The lower court has held that it is liable to be partitioned by the Civil Court because it is not assessed to Government revenue and

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because it is *abadi* land with which the revenue courts have no concern. It says that a mahal is a revenue-paying unit and since the *parao* is not assessed to revenue it is not part of the mahal and therefore section 233 (*k*) of the Land Revenue Act is not a bar to the partitioning of *abadi* land by the Civil Court. With this decision of the learned Subordinate Judge we are unable to agree. The word "mahal" as defined in section 4 of the Land Revenue Act is (*a*) any local area held under a separate engagement for the payment of land revenue; provided that if such area consists of a single village or portion of a village, a separate record of rights has been framed for such village or portion, a mahal also includes (*b*) any revenue free area for which a separate record of rights has been framed. With class (*c*) and (*d*) of the definition we are not concerned. Ordinarily speaking in a mahal there are many plots of land which, speaking colloquially, are not assessed to revenue, *i.e.*, there is no income derived from them which is to be taken into consideration at the time of the assessment of revenue. Roadways, uncultivated plots and even *abadi* sites of villages are all within the boundaries of a mahal, although no income may be derivable from them. The total income of the mahal is taken into consideration at the time of settlement, and on that, as a basis, revenue is fixed upon the whole mahal and the whole mahal is held under one engagement for the payment of revenue. A mahal may be, and frequently is, divided and sub-divided into many different *pattis* and *khatas* and the revenue is distributed over these sub-divisions. Each of these sub-divisions may contain land which is waste like the present *parao* land and the income from which may or may not have been taken into consideration in the fixing of the revenue. But the fact remains that all areas within the mahal are primarily responsible for the revenue of the mahal. Equally so in the case of a *khata*, which is but a sub-division of a mahal. In former days, under the rules fixed by the Board of Revenue, if a zamindar planted trees upon cultivated land in his mahal, when the grove was well established Government used to reduce the revenue of the area planted with trees. That was done as an inducement to zamindars to plant groves; the area thus granted, though free in a way from Government

revenue, yet was part and parcel of the mahal and the whole mahal remained responsible to Government for the revenue assessed upon it. In the present case the patwari's evidence leaves it beyond a shadow of doubt that this *parao* actually bears Khasra No. 952, that it is within khata No. 65, and though it may be that revenue was not fixed upon it still it remained a part and parcel of the khata and therefore responsible to Government for the total revenue fixed upon that khata. There can be no doubt that if the revenue was not paid Government would be within its right if it attached and sold this *parao* land for the purpose of recovering the revenue. This *parao* (*i.e.*, the site and not the houses that may be standing upon it) is therefore part and parcel of the mahal and as such is divisible by a partition suit in the Revenue Court. In so far, therefore, as the decree by the lower court purports to divide up the area of this *parao* is concerned it is bad and we must set it aside. It must be carefully noted that this does not affect the division of the house property standing upon it. House property is property which cannot be divided or partitioned by a Revenue Court. It is only the site of these houses in so far as they are part and parcel of the mahal that a Revenue Court can divide. We would like to point out to the court below that partition of sites, *i.e.*, *abadi* land in similar circumstances is done every day by those courts and the power of Revenue Courts to divide up the *abadi* land has never yet been questioned.

There remains the question whether the appellant has any share whatsoever in this *parao*.

[On the evidence it was held that the appellant had a one-fifth share in the *parao*.]

We, therefore, allow this appeal. We set aside the decree of the court below in so far as it operates on the land of the *parao*. So far as it has divided the house and other properties standing upon the *parao* the decree will stand. We also declare that the land of this *parao* is part and parcel of khata khewats Nos. 65 and 66 and that Mahmud Jahan Begam is entitled to a one-fifth share therein and that this property is divisible only by a partition under the Land Revenue Act.

Appeal decreed.