

well might, to be dealt with in accordance with the ordinary principles governing all cases where it is sought to make the assets of a deceased person liable, merely putting the propriety of applying those principles beyond doubt by enacting in section 166 that the word "lambardar" includes his heirs, etc.

A plaintiff can in a suit against the lambardar prove negligence or misconduct with a view to getting a decree against the lambardar personally, or in a suit against a holder of assets of the lambardar can prove the negligence or misconduct of the deceased lambardar in order to get a decree against the estate of the deceased lambardar in the hands of such holder.

We think, therefore, that the plaintiff in this case was entitled to a decree to the full amount of the *jama-bandi*, but that that decree should have been limited to the assets of the deceased lambardar in the hands of the defendants. The decree of the lower appellate court is modified accordingly. Parties will bear their own costs of the appeal.

Decree modified.

Before Justice Sir Cecil Walsh and Mr. Justice Banerji.

RAM PRASAD AND OTHERS (DEFENDANTS) v. MITHAN LAL (PLAINTIFF) AND SHYAM LAL AND OTHERS (DEFENDANTS).*

1927
May, 9.

Act (Local) No. III of 1901 (United Provinces Land Revenue Act), sections 107 and 111—Partition—Objections based on adverse possession overruled as frivolous—Question of proprietary title—Appeal.

In a suit for partition, whether a question of proprietary title is raised or not depends on the exact objections raised by an objector, and when an objector claims to be in possession

* Second Appeal No. 714 of 1925, from a decree of J. Allsop, District Judge of Aligarh, dated the 10th of January, 1925, confirming a decree of M. Abdurrab, Assistant Collector, first class of Aligarh, dated the 12th of March, 1924.

1927
HAIDARI
BEGAM
v.
SRIMAN
THAKUR
LAKSHMI
NARAINJI
MAHARAJ.

1927

RAM
PRASAD
v.
MITHAN
LAL.

of any particular plot of land by adverse possession, that certainly raises a question of title.

Where an Assistant Collector rejected objections taken to the partition, on the ground that they were, on the face of them, frivolous, it was *held*, that he must be deemed to have chosen to decide the question raised in the objections on the merits, and therefore an appeal lay to the District Judge.

Ram Narain v. Jagan Nath Prasad (1), and *Bhagwan Dut v. Brij Bhukan* (2), followed. *Nand Ram v. Brahm-khayal* (3), and *Muhammad Nasar-ullah Khan v. Muhammad Ishuq Khan* (4), referred to.

THIS was an appeal by defendants in a partition application filed by one Mithan Lal under section 107 of the Land Revenue Act. Mithan Lal applied for perfect partition of his share in the *mahal*. Notice of this application was issued to all the recorded co-sharers in the *mahal*, and the appellants filed objections to partition. They claimed to be the separate and exclusive owners of the portions of the *mahal* which they were in possession of, on the ground that about 50 years ago, by a private partition between the co-sharers, they had got the land, and on the ground of adverse possession also. They pleaded that even the inhabited area had been separated by the co-sharers and each co-sharer was in possession of his separate portion, and had built separate houses, but that only one *haveli* and a room were joint, and four cultivated plots in the outlying land and several uncultivated plots were also joint. The Assistant Collector, by his order of the 12th of March, rejected these objections on the ground that they were quite frivolous on the face of them. The objectors appealed to the District Judge of Aligarh, who rejected the appeal on the ground that no appeal lay to him. In his judgement he stated as follows :—
“ I may say at once that in view of several rulings of the Board of Revenue and of the Hon’ble High Court, it can be said almost with certainty that the objections did in

(1) (1915) I.L.R., 38 All., 115.

(2) (1923) 75 Indian Cases, 868.

(3) (1914) 22 Indian Cases, 949.

(4) (1910) I.L.R., 32 All., 523.

fact raise questions of proprietary rights, but it is also clear that the learned Assistant Collector did not treat them as raising any such questions. He treated the applications as objections with regard to separate possession of land in which there was a joint proprietary right."

The objectors thereupon appealed to the High Court.

Munshi *Panna Lal*, for the appellants.

Babu *Surendra Nath Gupta*, for the respondents.

The judgement of the Court (WALSH and BANERJI, JJ.), after stating the facts, thus continued :—

The objectors have come up in appeal before us and Mr. *Panna Lal*, on behalf of the appellants, has submitted that the order of the Assistant Collector rejecting their objection, whether on good, bad, or indifferent grounds, was a decision of the question of title which had been raised by them, and that the learned District Judge ought to have disposed of the appeal on the merits. The learned vakil for the respondents has urged that the question raised by the objectors does not amount to a question of proprietary title, and in any event, upon the objection, the partition officer will have to partition the *mahal* and allot portions to each of the co-sharers, and therefore it is of no moment whether the Assistant Collector did or did not decide that particular areas belonged to particular co-sharers. He has relied on the case of *Nand Ram v. Brahm Khayal* (1) and *Muhammad Nasar-ullah Khan v. Muhammad Ishaq Khan* (2), and has submitted that when a co-sharer claims to be in possession of a particular plot of land and claims that particular plot of land, it cannot be said that any question of proprietary title has been raised; and therefore no appeal lay to the District Judge.

Whether a question of proprietary title is raised or not depends on the exact objections raised by an objector, and when an objector claims to be in possession of any

(1) (1914) 22 Indian Cases, 949.

(2) (1910) I.L.R., 32 All., 523.

1927

RAM
PRASAD
v.
MITRAN
LAL.

particular plot of land by adverse possession, that certainly raises a question of title. Whether there is any force in the objection raised is a different matter altogether. We think that when an objection is raised as to the proprietary title there are three courses open to the Assistant Collector, namely, (1) to decline to grant the application for partition until the question in dispute has been determined by a competent court, (2) to require any party to the case to institute a suit in the civil court, (3) to proceed to inquire into the merits of the objection. In this case when the learned Assistant Collector went on to say in his order that the objection on the face of it was frivolous, we think that he must be deemed to have chosen to decide the question raised in the objection on the merits. Therefore an appeal lay to the learned District Judge. When a question of proprietary title is decided by the revenue court, or when that court directs a party to go to the civil court to have his rights declared, it is impossible to say that no question of proprietary title has been raised. In the case of *Ram Narain v. Jagan Nath Prasad* (1) a Bench of this Court held that when an Assistant Collector directed a party to have his right declared in a civil court upon objections raised to the partition, a question of proprietary right had been raised in the case. We think that the case of *Bhagwan Dut v. Brij Bhukan* (2) lays down the correct procedure to be followed in cases where objection to partition is made before an Assistant Collector. We are, therefore, of opinion that this appeal must be allowed and the case sent back to the learned District Judge of Aligarh to decide the appeal of the appellant before him on the merits. The question that the learned Judge will have to consider upon the materials on the record is whether there had been a previous partition and whether the parties were in possession of their respective shares as owners. Costs will abide the result.

Appeal allowed.

(1) (1915) I.L.R., 38 All., 115.

(2) (1923) 75 Indian Cases, 868.