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statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true, though it is obvious that, according as it is more or less true or false, the question of his good faith or otherwise, must be determined. If, having regard to certain facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his *bona fides*. This the Judge holds the defendant in the present suit to have done, and with his finding upon that head we see no ground to interfere. The appeal must be dismissed with costs.

Appeal dismissed.

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May 21.

Before Mr. Justice Spankie and Mr. Justice Straight.

ABHAI PANDEY AND OTHERS (PLAINTIFFS) *v.* BHAGWAN PANDEY AND OTHERS (DEFENDANTS).*

Partition of Mahál by arbitration—Sir-Land—Act XIX of 1873 *(N.-W. P. Land-Revenue Act), s.* 125*—Jurisdiction of Civil Courts.*

When the co-sharers of a mahál agree to have such mahál partitioned by an arbitrator, they must be understood to agree to the arrangements made by such arbitrator, and if he provides by his award that the sír-land of one co-sharer that falls by lot into the share of another co-sharer should be surrendered, that land must be given up by the co-sharer who has hitherto cultivated it. Such co-sharer's consent to such arrangement must be understood to have been given when he agreed to arbitration. S. 125 of Act XIX of 1873 must not be regarded as empowering a co-sharer, who has once given his consent to surrender the cultivation, to continue to cultivate the land against the will of the co-sharer who has become the owner of it by partition.

An agreement to refer to arbitration the partition of a mahál provided that, if sir-land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned. The arbitrator assigned certain sir-land belonging to the defendants in this suit to the plaintiffs. The partition was concluded according to the terms of the award. The defendants refused to surrender such land to the plaintiffs. The plaintiffs distrained the produce of such land, alleging that it was held by certain persons as their tenants and arrears of rent were due. The defendants thereupon sued the plaintiffs and such persons in the Revenue Court, claiming

* Second Appeal, No. 1275 of 1880, from a decree of J. W. Power, Esq., Judge of Gházipur, dated the 14th September, 1880, reversing a decree of Munshi Man Mohan Lal, Munsif of Ballia, dated the 13th July, 1880.

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such produce as their own. The Revenue Court held that such distress was illegal, as such land was in the possession and cultivation of the defendants as occupancy-tenants under s. 125 of Act XIX of 1873. The plaintiffs subsequently sued the defendants in the Civil Court for possession of such land, basing such suit on the partition proceedings. *Held* that the decision of the Revenue Court did not debar the Civil Courts from determining the rights of the parties under the partition, and such suit was cognizable in the Civil Courts.

THIS was a suit for possession of certain land situate in a village called Nasirabad, and for the mesne profits of such land. The co-sharers of the village including the parties to this suit had agreed that it should be partitioned by arbitration. The agreement to refer to arbitration provided that, if any sír-land belonging to one co-sharer were assigned to another co-sharer, the co-sharer to whom the same belonged should surrender it to the co-sharer to whom it might be assigned. The arbitrator who effected the partition assigned the land in suit, which was sír-land belonging to the defendants, to the plaintiffs. Before the partition was concluded the defendants preferred a petition to the revenue officer conducting the partition objecting to the award in so far as it assigned such sír-land to the plaintiffs, urging that if effect were given to the award in this respect they would be deprived of their rights under s. 125 of Act XIX of 1873. The plaintiffs, by way of an answer to this petition, preferred another in which they stated that the rights of the defendants under that section would in no way be endangered by effect being given to the award. The partition was eventually effected in accordance with the terms of the award. The defendants did not surrender the land in suit but retained possession of it. The plaintiffs subsequently to the partition distrained the produce on a portion of the land in suit, alleging that it was held by certain persons as their sub-tenants and that arrears of rent were due. The defendants thereupon instituted a suit in the Revenue Court against the plaintiffs and such persons, claiming the property which had been distrained as their own. The Revenue Court decided that the distress was illegal, as the land was in the possession and cultivation of the defendants as occupancy-tenants under s. 125 of Act XIX of 1873. The plaintiffs subsequently brought the present suit against the defendants in the Munsif's Court. The defendants set up as a defence to the suit that the Revenue Court

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had decided that they were the occupancy-tenants of the land under s. 125 of Act XVIII of 1873, and such decision had become final, and that, being occupancy-tenants of the land, the claim to eject them was not cognizable in the Civil Courts. The Munsif, having regard to the agreement to refer to arbitration and the award, disallowed this defence, and gave the plaintiffs a decree. On appeal by the defendants the District Court, having regard to the petition of the plaintiffs and the decision of the Revenue Court mentioned above, held that the defendants must be retained in possession of the land, and could not be ejected except for arrears of rent, and dismissed the suit.

On appeal by the plaintiffs to the High Court it was contended on their behalf that they were entitled to the land in suit under the agreement to refer to arbitration and the award; that the petition of the plaintiffs contained nothing which varied the terms of that agreement; and that the decision of the Revenue Court did not preclude the determination by the Civil Courts of the title of the plaintiffs to the land.

Pandit *Ajudhia Nath* and Lala *Lalta Prasad*, for the appellants.

Mr. *Conlan* and Munshi *Sukh Ram*, for the respondents.

The judgment of the Court (SPANKIE, J., and STRAIGHT, J.,) was delivered by

SPANKIE, J.—There is no dispute as to the partition and the award by which it was made, nor are the terms of the award questioned. It is equally beyond dispute that the parties agreed to the arbitration. There is in the award a clear provision that, where land under the cultivation of one co-sharer fell into the lot of another, the latter should have possession. When the partition was effected formal possession was given under it on the 28th October, 1877. But in reality the defendants did not quit the land in dispute but continued to cultivate it. The petition to which the Judge refers does not affect the terms of the award, nor contain any provision that would deprive the plaintiffs of their right to enforce the terms of the award. The parties are bound by that award. In point of fact the provision as to possession is not opposed

to, but is consistent with, s. 125 of the Land-Revenue Act. That section provides that no sír-land belonging to any co-sharer shall be included in the mahál assigned on partition to another co-sharer, unless with the consent of the co-sharer who cultivates it, or unless the partition cannot otherwise be conveniently carried out. When co-sharers agree to have the partition made by an arbitrator they must be understood to agree to the arrangements made by the arbitrator, and if he provides by his award that the sír-land of one co-sharer that falls by lot into the share of another co-sharer should be surrendered, that land must be given up by the co-sharer who has hitherto cultivated it. His consent to the arrangement must be understood to have been given when he agreed to arbitration and accepted the award. The second paragraph of s. 125 declares that if any sír-land be so included, and after partition such co-sharer continue to cultivate it, he shall be an occupancy-tenant of such land, and his rent shall be fixed by order of the Collector. But the section must not be regarded as empowering a co-sharer, who has once given his consent to surrender the cultivation, to continue to cultivate the land against the will of the co-sharer who has become the owner of it by partition. In Act XIX of 1863 no provision was made in regard to sír-land. It would seem that, in order to remove any doubt as to the position of co-sharers who continued (as tenants) to cultivate the land that had been held by them as sír, s. 125 of the Land-Revenue Act defines their position to be that of occupancy-tenants. They are placed in a position resembling that of the ex-proprietary tenants referred to in s. 7 of Act XVIII of 1873. But the first paragraph of s. 125 of the Land-Revenue Act contemplates and foresees that occasions may arise when a co-sharer is willing to surrender his right of cultivation of the land hitherto owned by him. If the Revenue Court in the distress suit found the defendants continuing to cultivate their sír-land, it assumed that they occupied the position assigned to such persons in the second paragraph of s. 125 of the Act. But that does not affect the jurisdiction of the Civil Court in dealing with the rights of the parties. The plaintiffs are not asking the Court to interfere with the distribution of land by partition, but are practically seeking to enforce the terms of the partition in regard to themselves as against the defendants who are trying to avoid them. I have

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examined the case cited by Munshi Sukh Ram [Second Appeal, No. 226 of 1878 (1)] and I do not find that it is at all in point. We decree the appeal and reverse the decree of the lower appellate Court, restoring that of the Munsif with costs.

Appeal allowed.

1881
May 26.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

BAHADUR (PLAINTIFF) *v.* NAWAB JAN (DEFENDANT)*

Suit for redemption of Mortgage—Valuation of suit—Jurisdiction.

The integrity of a joint usufructuary mortgage having been broken in consequence of the mortgagee having purchased the right of several of the mortgagors, one of the mortgagors sued in the Munsif's Court to recover his share of the mortgaged property, alleging that the mortgage had been redeemed. The value of the mortgagee's right, *quâ* such share, was under Rs. 1,000. The mortgagee set up as a defence to such suit that a bond, under which a sum exceeding Rs. 1,000 was due, had been tacked to the mortgage, and that until such sum had been satisfied the plaintiff could not recover possession of his share. *Held*, on the question whether the Munsif had jurisdiction, that the value of the subject-matter of the suit was the value of the mortgagee's right, *quâ* the plaintiff's share; and as the value of such right did not exceed Rs. 1,000 even if it were held that the mortgaged property was further incumbered with such bond, such suit was cognizable in the Munsif's Court. The principle laid down in *Gobind Singh* v. *Kallu* (2) followed.

THE plaintiff in this suit claimed possession of a one-fifth share of a certain village, which had been mortgaged on the 9th January, 1816, by its then proprietors, for Rs. 325 for a term of six years, the mortgagee obtaining possession. The suit was instituted in the Munsif's Court, being valued at Rs. 65, one-fifth of the mortgage-money. The plaintiff, who represented the mortgagors as regards the share in suit, alleged that the entire mortgage-debt had been satisfied out of the usufruct. The defendant in the suit, who derived his title from the mortgagee, set up as a defence to it, amongst other things, that the mortgagors had on the 2nd August, 1824, given the mortgagee a bond for Rs. 682, which had been tacked to the mortgage of 1816, and the principal amount and interest due on this bond, *viz.*, Rs. 4,695-10-0, must be satisfied before the plaintiff could obtain possession of the share in suit.

* Second Appeal, No. 1251 of 1880, from a decree of H. A. Harrison, Esq., Judge of Farukhabad, dated the 31st August, 1880, reversing a decree of Maulvi Wajid Ali, Munsif of Kaimganj, dated the 17th July, 1880.

(1) Unreported. (2) I. L. R., 2 All. 778.