

with a view to acquire or to divest themselves of such a jurisdiction the courts of revenue must in the very nature of things decide the question if it is raised as to whether the subject-matter of resumption retains the character of a grove or not. It further follows that the courts of revenue must be deemed to be possessed of jurisdiction to decide the issue just now mentioned. Therefore the finding of the court of revenue in the present case that the land in question no longer retains the character of a grove is a finding of a court possessed of exclusive jurisdiction in the subject-matter of this litigation and is conclusive.

By THE COURT :—The appeal is allowed, the order of remand passed by the learned Subordinate Judge is set aside and the plaintiff-respondent's suit is dismissed with costs in all three courts.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan, Acting Chief Judge and
Mr. Justice Gokaran Nath Misra.

AJODHIA PRASAD AND ANOTHER (PLAINTIFFS-APPELLANTS) *v.* LAKHPAT AND OTHERS (DEFENDANTS-RESPONDENTS).*

United Provinces Land Revenue Act (III of 1901), sections 110, 111, 112 and 233(k)—Partition of mahals—Party to a partition, whether can challenge the accuracy of partition—Perfect and Imperfect partitions—Decision on a question of title in partition proceedings, how far binding—Partition of several mahals or a single mahal or portion of a mahal, effect of.

Once a particular share is allotted to a party during the course of partition proceedings it is not open to any person who was a party to those partition proceedings to challenge

*Second Civil Appeal No. 163 of 1928, against the decree of S. Shankat Husain, Additional Subordinate Judge of Gonda, dated the 25th of February, 1928, modifying the decree of Girja Shankar, Munsif of Tarabgunj, dated the 10th of November, 1927.

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the accuracy of such an award since such objections would alter the distribution effected at the time of partition. In such a case there is no difference under the provisions of the United Provinces Land Revenue Act (III of 1901) between the case of a perfect and imperfect partition and all questions of title, whether expressly or impliedly decided during the course of partition proceedings, are binding upon all co-sharers who are parties to the partition proceedings whether the partition relates to several *mahals* or one single *mahal* or to a portion of one *mahal*. *Raghubur v. Talsi Ram* (1), *Shian Kuar v. Fateh Singh* (2), and *Baijnath Singh v. Rajju Singh* (3), followed. *Chokhey Singh v. Jote Singh* (4), distinguished.

THE case was originally heard by BISHWESHWAR NATH SRIVASTAVA, J., who referred it to a Bench for decision. His order of reference is as follows:—

SRIVASTAVA, J.:—This appeal arises out of a suit brought by the plaintiffs to recover possession of their share in certain property which had been redeemed by one of their co-mortgagors, Sita Ram, on payment of their share of mortgage-debt. The original mortgage was executed on the 5th of June, 1925, by three persons, namely Padarath, father of the plaintiff No. 1, Musammat Baryari, plaintiff No. 2 and one Ramsukh. Ramsukh died issueless in July, 1919. The plaintiffs claim to have received a share in the inheritance of Ramsukh under a family arrangement between them and Sita Ram, who was admittedly the sole heir to the estate of Ramsukh. The plaintiffs, therefore, claimed possession not only of the share to which they were entitled in their own right but also of the share which they claimed through Ramsukh. The plaintiffs so far as one of the items of property in suit is concerned, namely a share in *mahal* Lalai, relied also upon a partition of the said *mahal* which had been made by the revenue courts in 1922 and claimed that the share

(1) (1915) 13 A. L. J., 548.

(2) (1921) 24 O. C., 268.

(3) (1925) 12 O. L. J., 571.

(4) (1909) L. R., 36 I. A., 3.

allotted to them at the partition which included the share which they claimed through Ramsukh could not be questioned in the present suit.

The learned Munsif of Tarabganj, who tried the suit, accepted the plaintiffs' contention and decreed the claim except as regards one plot in respect of which the plaintiffs had failed to prove their share. On appeal the learned Additional Subordinate Judge of Gonda has disagreed with the opinion of the trial court as regards the effect of the partition which took place in 1922 and held that the plaintiffs are not entitled to the share which they claimed through Ramsukh. The point requiring determination in this appeal is as to the effect of the partition on the shares of the parties.

In order to appreciate the matter in controversy it is necessary to state a few facts relating to the partition. On the 20th of March, 1923, an application for imperfect partition of *mahal* Lalai was made by the plaintiffs and certain other co-sharers. In this application the plaintiffs stated the extent of the share owned by them and admittedly this share included the share claimed by them through Ramsukh. On the 27th of June, 1923, an objection was made by Sita Ram and another co-sharer Nageshar in which they questioned the correctness of the plaintiffs' share as entered in the *khewat* and in the application for partition. They asked for an opportunity to have the matter decided by the civil court or failing it requested the revenue court to decide the question itself. This objection was rejected on the 3rd of August, 1923, on the ground that it was barred by time. So the partition proceeded and three *pattis* were formed, two of which are owned by the plaintiffs and the third by Sita Ram and his co-sharers. The learned Additional Subordinate Judge relying on an observation of their Lordships of the Privy Council in *Chokhey Singh v. Jote Singh* (1) and on the decision of a single Judge of

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this Court in *Phuljhari v. Har Prasad* (1) held that the determination of the question regarding the correct share of the parties is not barred by the partition proceedings because such determination would not affect the shares of any persons other than the parties to the litigation. This view of the court below is challenged by the learned Counsel for the plaintiffs. He maintains that once a partition has been made by the revenue court and certain shares have been allotted to each of the parties to the partition any subsequent adjudication by the civil court determining the shares contrary to the partition necessarily affects the partition and is therefore barred by the provisions of section 233(k) of the Land Revenue Act. He seeks to distinguish the two cases relied on by the lower court on the ground that the facts of those cases were quite different. The learned Counsel for the respondents, on the other hand, supports the decision of the court below on the ground that the words used in section 233(k) are "Partition or union of *mahals*." He lays emphasis on the use of the word *mahals* in the plural and argues that the bar of section 233(k) applies only in those cases in which there is a partition of a village or *mahal* into several *mahals*. As a corollary from this he further contends that this clause has no application to a case in which there has been only an imperfect partition resulting in the formation of separate *pattis* and no separate *mahals* have come into existence. He has ably contended that the observation of their Lordships of the Privy Council relied upon by the lower court and the view taken in *Phuljhari v. Har Prasad* (1) can be explained only on the construction of the clause contended for by him.

The parties admit that there is no decided case in which the point has been distinctly raised or decided. I am of opinion that the question raised in the appeal

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is of considerable importance and it is desirable that there should be an authoritative decision on the point by a Bench of two Judges. I, therefore, certify accordingly under section 14 of the Oudh Courts Act.

Mr. *Aditya Prasad*, for the appellants.

Mr. *Haider Husain*, for the respondents.

MISRA, J. :—This is a second appeal arising out of a suit brought by the plaintiffs-appellants to recover possession of their share in certain property which had been redeemed by one of their co-mortgagors and the dispute in appeal relates merely to the amount of the share which they are entitled to recover.

The facts of the case are that on the 5th of June, 1915, a mortgage was executed by three persons namely Padarath, father of plaintiff No. 1, Musammnat Bariari, plaintiff No. 2 and one Ramsukh, in favour of one Ram-path for a consideration of Rs. 225. The mortgage was one with possession. Ramsukh died and his heir-at-law, Sita Ram, who was defendant No. 1 in the present case, redeemed the entire mortgage. Although Sita Ram was the heir-at-law of Ramsukh yet it appears that the mutation of names in respect of the property left by Ramsukh was not exclusively made in favour of Sita Ram but a portion of the property went to the plaintiffs-appellants as well, in whose favour mutation was granted to that extent. The plaintiffs now claim redemption of the share to the extent that is to be found entered in their name in the *khewat*. We may also state that the share entered in the *khewat* was subsequently maintained in an imperfect partition of *mahal* Lalai, village Purai Brahmachari, hamlet of Wazirganj, district Gonda, effected in the revenue courts in the year 1923-24.

The main defence put forward by the defendants-respondents, who are the heirs of Sita Ram, is to the

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effect that the entry in the *khewat* was erroneous since Sita Ram being the nearest heir of Ramsukh was entitled to his entire property, and that the plaintiffs-appellants were not entitled to any share therein.

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The reply urged by the plaintiffs-appellants to this contention raised on behalf of the defendants-respondents was to the effect that this defence was not open to the defendants-respondents inasmuch as the share entered in the *khewat* had been confirmed by the aforesaid partition which must be deemed to have settled finally the title of the parties in respect of the share so entered.

The learned Munsif of Tarabganj who tried the case held that after the partition of 1923-24, by virtue of which the plaintiffs had been allotted the share of which they claimed redemption in the present suit, it was not open to the defendants-respondents who were parties to those partition proceedings through their predecessor in title Sita Ram to deny the plaintiffs' title to a share in the property. In that view of the case he gave a decree for the entire share claimed by the plaintiffs as will appear from his decree, dated the 20th of November, 1927.

On appeal the learned Additional Subordinate Judge of Gonda has taken a different view and has given the plaintiffs a decree only in respect of that share which was their personal property and has dismissed their suit in respect of the additional share which had been allotted to their name after the death of Ramsukh and in respect of which their claim had been confirmed at the time of partition. The result was that he decreed redemption to the plaintiffs of only a portion of the property claimed subject to the payment of a proportionate sum of money. This was the order embodied in his decree, dated the 25th of February, 1928.

The plaintiffs have now appealed to this Court and originally the case came on for hearing before a single

Judge of this Court who has referred it for decision to a Bench of two Judges. The case has now been laid before us.

The case has been argued at great length and we have come to the conclusion that this appeal must be allowed and the decree passed by the learned Munsif must be restored. We now proceed to give our reasons for our decision.

It appears that on the 20th of March, 1923, plaintiffs-appellants filed an application in the revenue court for an imperfect partition of *mahal* Lalai, named above, and prayed that a 7 annas odd share which was entered opposite their names in the *khewat* should be separated from the rest of the *mahal* (*vide* exhibit 15). On receipt of this application for partition, the revenue courts issued a proclamation calling upon all the recorded co-sharers including Sita Ram, who was one of them, to appear and to file any objections which they might deem necessary to make. The date fixed in the proclamation for making objections was the 21st of May, 1923 (*vide* exhibit 20). On the date fixed, namely, the 21st of May, 1923, Sita Ram filed an objection but never raised any question of title which he seems to have subsequently raised. In the objections then filed he admitted the title of the plaintiffs to the extent of the share entered in the *khewat* but prayed that *pattis* should be formed on partition in a particular way (*vide* exhibit 16). On the 22nd of May, 1923, an order was passed by the revenue court that the *pattis* should be prepared in accordance with the *khewat* as desired by the applicant (*vide* exhibit 17). It appears that subsequently on the 27/28th of June, 1923, Sita Ram filed another objection in which one co-sharer also joined with him. In that objection he challenged the accuracy of the entry in the *khewat* (*vide* exhibit 19). The revenue court rejected the second objection on the 3rd of August, 1923, on the ground that

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it had been filed too late. The partition then proceeded and three *pattis* were formed, two of which are owned by the plaintiffs and a third was owned by Sita Ram. On the 23rd of June, 1924, Thakur Sardar Singh, Deputy Commissioner, confirmed the partition which awarded to the plaintiffs the share equivalent in extent to what was entered opposite their names in the mutation proceedings.

It is urged in appeal before us on behalf of the plaintiffs-appellants that the defendants-respondents cannot now be allowed to urge an objection which would reduce the share allotted to them at the time of partition and section 233(k) of the United Provinces Land Revenue Act, 1901, was relied upon for the purpose. Several decisions of this Court as well as of the late court of the Judicial Commissioner of Oudh and also of the Allahabad High Court have been relied upon by the plaintiffs-appellants in support of the proposition that once a particular share is allotted to a party during the course of partition proceedings it is not open to any person who was a party to those partition proceedings to challenge the accuracy of such an award since such objections would alter the distribution effected at the time of partition.

On behalf of the respondents it is contended that since the partition was only an imperfect one and since one single *mahal* had been partitioned into several *pattis* the provisions of section 233(k) could not apply.

We regret we cannot accept either of the contentions of the respondents and must hold that the objection raised on behalf of the plaintiffs-appellants must prevail.

As to the first objection, we must point out that the contention embodied therein receives no support whatever when we refer to section 106 of the United Provinces Land Revenue Act (III of 1901). When we refer

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to that section we find that partition has been defined to mean a division of a *mahal* or of a part of a *mahal* into two or more portions each consisting of one or more shares. It is laid down that in the case of "imperfect partition" the several portions remain jointly responsible for the revenue assessed on the whole *mahal* whereas in the case of a "perfect partition" the whole *mahal* is divided and the several portions become separate *mahals* each severally responsible for the revenue distributed thereon. It is laid down in the same section that the procedure prescribed in chapter VII, in which the section finds its place, shall be followed in all partitions whether imperfect or perfect unless it is otherwise expressly declared. Referring to section 111, which is a section of the same chapter laying down the procedure which is to be followed by the revenue court when any objection is raised before it by a recorded co-sharer which involves a question of proprietary title which has not been already determined by a court of competent jurisdiction, we find that the procedure prescribed is that the revenue court may either decline to grant the application for partition until the question raised has been determined by a competent court or may require any party to the case to institute within three months of the date of its order a suit in the civil court for the determination of such question or may itself proceed to inquire into the merits of this objection. Section 112 further provides that all decrees passed by the revenue court, when it chooses to decide itself the question of proprietary title raised in the objection, shall be held to be equivalent to a decree of a civil court and shall be final between the parties unless appealed to the higher authorities. It would, therefore, clearly appear that all the orders which relate to the question of title and are passed by a revenue court, if it chooses to pass such an order, must be considered to be binding upon the parties whether

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in the course of the said partition proceedings the partition effected is imperfect or perfect. It was argued on behalf of the respondents that no such decision has been arrived at in this case by the revenue court. This argument cannot be accepted inasmuch as a party to a partition proceedings if he does not choose to file any objection raising the question of proprietary title at the proper time and his objection is consequently dismissed must be deemed to have raised the question and got an adjudication thereof adversely to himself.

It, therefore, appears to us to be clear that under the provisions of the United Provinces Land Revenue Act (III of 1901) there is no difference so far as the point before us is concerned, between the case of a perfect and imperfect partition. We are supported in this view by a decision of the Allahabad High Court reported in *Raghubar v. Tulshi Ram* (1). It was held by CHAMBER, J. in that case that the provisions of sections 110, 111 and 112 of the United Provinces Land Revenue Act (III of 1901) applied to imperfect partitions as well and the rule laid down by the various authorities that where a decision relating to a question of title has been either expressly or impliedly arrived at during the course of partition proceedings, it is no more open to any party thereto to challenge that decision subsequently, applies to cases both of perfect partition as well as imperfect partition.

The law relating to the effect of partition proceedings has been very clearly laid down in a recent decision of the late court of the Judicial Commissioner of Oudh reported in *Bajinath Singh v. Rajju Singh* (2), to which one of us was a party, where the whole law is discussed, and it is sufficient for us to state that we are in full agreement with the view expressed in that case.

(1) (1915) 13 A. L. J., 548.

(2) (1925) 12 O. L. J., 571.

As to the second objection we are of opinion that it is equally untenable and that the question is concluded by a recent authority. In this connection we may refer to a decision of the late court of the Judicial Commissioner of Oudh reported in *Shiam Kuar v. Fateh Singh* (2), to which one of us was also a party. The question now urged before us on behalf of the defendants-respondents, that the restriction laid down in section 233(k) of the United Provinces Land Revenue Act applies only where several *mahals* are partitioned and not where one single *mahal* is partitioned, was raised in that very case and we need only quote a portion of the judgment which deals with this point:—

“We must, therefore, proceed to examine that language. The prohibition is in the following words: ‘No person shall institute any suit or other proceedings in the civil court with respect to partition or union of *mahals*’. The difficulty in interpretation is stated to be the absence of the words ‘part of a *mahal*’ in the above clause. In our opinion the difficulty is only apparent and not real. It will be noticed that in clause (k) of section 233 the heading of chapter VII of the Land Revenue Act is quoted with the change of ‘or’ for ‘and’. A reference to chapter VII will show that the words ‘of *mahals*’ govern only the word ‘union’ and not the word ‘partition’. ‘Partition’ is given a special meaning and standing by itself means the division of a *mahal* or of a part of a *mahal* into two or more portions (section 106). The heading, therefore, if written in an explanatory manner would

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convey the meaning that chapter VII deals with the division of a *mahal* or of a part of a *mahal* and with union of *mahals*. It will be noticed if we read through chapter VII that the word 'partition' has been given throughout the chapter this special meaning and that nowhere the words 'partition of a *mahal*' are used. The word 'union' has no special meaning assigned to it in the Act. Similarly in clause (k) of section 233 the words 'of *mahals*' qualify the word 'union' only and not the word 'partition' which has the special meaning of section 106 of a division of a *mahal* or of a part of a *mahal* into two or more portions.

If the jurisdiction of the civil court is not barred in the case of the partition of a portion of a *mahal*, parties may get a whole *mahal* partitioned by a civil court in two suits covering two portions thereof. The exclusion of the jurisdiction of the civil court is necessary for the partition of a *mahal* to enforce the important provision of section 109 of the Land Revenue Act that a Collector can stop a partition independently of the wishes of the co-sharers of a *mahal* to the contrary. The power of a Collector, which it is desirable to maintain to facilitate the collection of revenue will disappear if partition of a portion of a *mahal* by the civil court is permitted."

We are in full agreement with the remarks quoted above, and are of opinion that all questions of title whether expressly or impliedly decided during the course of partition proceedings are binding upon all co-sharers

who are parties to the partition proceedings whether the partition relates to several *mahals* or one single *mahal* or to the portion of one *mahal*.

The learned Counsel for the defendants-respondents relied very much upon a case decided by their Lordships of the Privy Council which will be found reported in *Chokhey Singh v. Jote Singh* (1). We have examined that case carefully and it appears to us that it does not in any way help the respondents. In that case it is true that their Lordships observed on page 292 that the effect of the partition was that the village had been divided into two *thoks* one of which was divided between the parties to that suit in almost equal proportions and that the shares of no other persons were effected by the partition order. But this does not in any way warrant the inference that where the effect of a suit was to deal only with the entity of an entire *mahal* the restriction laid down in section 233(k) could not be applied. It appears to us to be quite clear that the defence raised by the respondents clearly purports to affect the share which has been allotted to the plaintiffs-appellants. It is no doubt true that the shares of the plaintiffs as well as of the defendants are situate within one entire *mahal* but that would be no ground for saying that the shares allotted to each of them are not to be disturbed if the objection of the defendants-appellants is held to prevail.

We may further point out that in the case quoted above their Lordships of the Privy Council allowed the civil suit to prevail because it had been agreed upon between the parties during the course of partition proceedings that the partition was to be effected for the present according to possession and that it was to remain open to the parties to get the question of title decided by

(1) (1909) L. R., 36 I. A. 3=12 O. C., 23.

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means of a separate suit filed in a competent court. It is obvious that no such agreement was arrived at in the present case and consequently the ruling quoted above cannot apply to the facts of the present case.

We are, therefore, of opinion that the judgment of the Additional Subordinate Judge of Gonda cannot be maintained.

We accordingly accept the appeal, set aside the decree of the lower appellate court and restore that of the Munsif with costs in all the three courts.

HASAN, A. C. J. :—I agree that the appeal should be allowed and the decree of the trial court restored. My views on the question of finality of partition proceedings arising under chapter VII of the United Provinces Land Revenue Act, 1901, have been expressed twice before, once in the case of *Shiam Kunwar v. Fateh Singh* (1) and on the second occasion in the case of *Baij Nath Singh v. Rajju Singh* (2).

BY THE COURT :—The appeal is allowed, the decree of the lower appellate court is set aside and that of the Munsif restored with costs in all the three courts.

Appeal allowed.

(1) (1921) 24 O. C., 268.

(2) (1925) 12 O. L. J., 571.