

1896

CHUNDRA-  
BATI  
KOERI  
v.  
MONJI  
LAL.

The judgment of the Court (GHOSE and GORDON, JJ.) was as follows :—

We think this appeal must fail; in the *first* place, because the person who has been appointed manager to the estate of the lunatic, Babu Isri Pershad, under the provisions of Act XXXV of 1858, has not been made a party respondent in this appeal; and in the *second* place, because there is no authority for the contention that a married daughter living with her husband and separate from her father is entitled to a separate maintenance being allowed to her against her father's estate, when that estate is taken charge of by the Court under the provisions of the said Act. Section 13 of the Act provides for the maintenance of the lunatic and of his family. The word "family" we understand to include persons living with the lunatic as members of his family, that is to say, persons actually depending upon him for their maintenance. The appeal must accordingly be dismissed, but we make no order as to costs.

H. W.

*Appeal dismissed.*

*Before Mr. Justice Banerjee and Mr. Justice Gordon.*

1896  
February 10.

ABDUL KHALIQ AHMED *alias* KONAI MIA AND OTHERS (PLAINTIFFS) v.  
ABDUL KHALIQ CHOWDHRY AND OTHERS  
(DEFENDANTS).\*

*Partition, Imperfect form of—Partition of lands in different estates—Jurisdiction of Civil Courts—Assam Land and Revenue Regulation (I of 1886), section 154, clause (e), section 96.*

In a suit for partition, without division of revenue, of certain lands held jointly by the parties in four different estates governed by the Assam Land and Revenue Regulation (I of 1886), *held*—

That, although the division asked for may not include all the lands of each of the four estates, still such division would result in a division of each of those estates, the lands left out forming one portion and the lands sought to be divided forming another. The suit therefore was one for an "imperfect partition" within the definition in section 96 of the Assam Land and Revenue Regulation, and section 154, clause (e) of that Regulation, barred the jurisdiction of Civil Courts in such a suit.

\* Appeal from Original Decree No. 169 of 1894, against the decree of Babu Joy Gopal Sinha, Subordinate Judge of Sylhet, dated the 5th of February 1894.

THE facts material to this report and the arguments of pleaders on either side appear sufficiently in the judgment of the High Court.

Dr. *Rash Behari Ghose* and *M. Mahomed Habibulla* for the appellants.

Babu *Srinath Dass* and Babu *Jatiprasad Surbadhikari* for the respondents.

The judgment of the High Court (BANERJEE and GORDON, JJ.) was as follows :—

This was a suit for partition of some of the lands of four estates bearing Nos. 2, 3, 7 and 15 on the rent roll of the Sylhet Collectorate, being the lands held and owned by the parties to the suit. The other lands of those four estates are not included in this suit, being lands in which the parties to this suit are stated to be interested jointly with certain other persons not before us. And the plaintiffs said in their plaint that they only asked for a division of the lands without any division of the Government revenue.

The defendants, amongst other objections, urged that the suit could not proceed, as the Civil Court had no jurisdiction to try a suit of this description under the provisions of the Assam Land and Revenue Regulation, and that the suit could not proceed for the further reason that other lands which are also jointly held by the parties had not been included in the suit.

The Court below has given effect to these two objections, and it has further found that there is a plot of land appertaining to the four *taluks* jointly and belonging exclusively to the parties to this suit, which has not been included in it ; and it has accordingly dismissed the suit.

In appeal it is contended on behalf of the plaintiffs that the Court below is in error in holding that clause (e) of section 154 of the Assam Land and Revenue Regulation was a bar to the suit, and that the fact of some lands appertaining to the four *taluks* in question being left out of the suit was also a bar to the suit.

We are of opinion that the first ground upon which the Court below has dismissed the suit is a valid ground, and that clause (e) of section 154 of the Assam Land and Revenue Regulation, that is, Regulation I of 1886, is a bar to the suit. Section 154 provides that, except when otherwise expressly provided in this Regulation, or in the rules issued under this Regulation, no Civil Court shall

1896

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KHALIQ  
AHMED  
v,  
ABDUL  
KHALIQ  
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1896

ABDUL  
KHALIQ  
AHMED  
v.  
ABDUL  
KHALIQ  
CHOWDHRY.

exercise jurisdiction in regard to claims of persons to imperfect partition, that is, partition of land without a division of the Government revenue, except in cases in which a perfect partition could not be claimed from, and has been refused by, the revenue authorities, on the ground that the result of such partition would be to form a separate estate liable for an annual amount of revenue less than Rs. 5. It is not shown that there is any express provision in this Regulation, or in the rules issued under this Regulation, under which this case can come, nor is there any suggestion that a perfect partition had been refused by the revenue authorities. But the ground upon which the present case is sought to be taken out of this provision of section 154 is that the partition that is here asked for is not an imperfect partition, such as the Regulation contemplates. Now an imperfect partition is defined in section 96 thus: " 'Imperfect partition' means the division of a revenue-paying estate into two or more portions jointly liable for the revenue assessed on the entire estate." And it is argued that the division that is here asked for is not a division of a revenue-paying estate into two or more portions, but is a division of some of the lands of four different estates all taken together. But the division of four different estates must in an and include a division of each one of them. Although the division that is asked for may not include all the lands of each of the four estates, still the division that is asked for would result in the division of each one of those four estates, the lands left out of this suit forming one portion, and the lands sought to be divided in this suit forming the other portion or portions. It was not disputed that the plaintiffs could not by lumping up two or more estates together get rid of the provisions of section 154 of this Regulation; and if that is so, the proper course for the plaintiffs was to have moved the revenue authorities for a partition of each of these four estates in which they own a certain interest.

In this view of the case it is not necessary to pronounce any opinion upon the other ground on which also the lower Court has considered this suit to be untenable.

The result is that this appeal must be dismissed with costs. We assess the hearing fee at Rs. 200.

S. C. C.

*Appeal dismissed.*