

I would have agreed with the view taken as to the evidential value of the *rewaj-e-am* generally in the case of *Muhammad Zafar v. Kaniz Saiyada* (1).

BY THE COURT:—The appeal is dismissed with costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Muhammad Raza and Mr. Justice  
A. G. P. Pullan.*

1930  
October, 15.

CHANDRA BALI AND ANOTHER (PLAINTIFFS-APPELLANTS)  
v. DRIGPAL SINGH AND ANOTHER (DEFENDANTS-  
RESPONDENTS)\*

*United Provinces Land Revenue Act (III of 1901), section 233(k)—Suit for declaration that plaintiffs were entitled to be recorded as co-sharers in a mahal and not the defendants—Parties allotted one mahal jointly by revenue court in a previous partition suit—Civil suit, if barred by section 233(k), Land Revenue Act—Res Judicata—Constructive res judicata.*

Where the plaintiffs brought a suit for a declaration that they are the co-sharers in a certain mahal and are entitled to be recorded as such and not the defendants and in a previous partition suit in the revenue court both of them were arrayed on the same side and had one mahal allotted to them jointly, but in the civil suit no attempt was made to interfere with the decision of that court, *held*, that the suit was not barred by the provisions of section 233(k) of the Land Revenue Act, and no question of constructive *res judicata* can be said to arise. *Lal Bihari v. Parkali Kunwar* (2), *Data Din v. Nohra* (3), and *Musammatt Phuljhari v. Har Prasad* (4), relied on. *Baij Nath Singh v. Bahadur Singh* (5), distinguished. *Ajodhia Prasad v. Lakhpat*, (6) referred to.

Mr. Ghulam Imam, for the appellants.

Mr. Haider Husain, for the respondents.

\*Second Civil Appeal No. 30 of 1930, against the decree of M. Ziauddin Ahmad, Subordinate Judge of Sultanpur, dated the 30th of November, 1929, reversing the decree of Saïed Hasan Irshad, Munsif of Amethi at Sultanpur, dated the 15th of December, 1928.

(1) (1927) A.I.R., Oudh., 598.

(2) (1920) I.L.R., 42 All., 809.

(3) (1930) A.L.J., 1046.

(4) (1926) I.L.R., 1 Luck., 318.

(5) (1925) 2 O.W.N., 872.

(6) (1928) I.L.R., 4 Luck., 291.

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RAZA and PULLAN, JJ. :—This appeal has been referred to a Bench by one of us for determination. There is only one question of law which is to be decided, and there appears to be some conflict of authority on this question between at least one decision of the late Court of the Judicial Commissioner in the case of *Baij Nath Singh v. Bahadur Singh* (1) and several decisions of the Allahabad High Court notably those reported in *Lal Bihari v. Parkali Kunwar* (2) and *Data Din v. Nohra* (3) and a single Judge decision of this Court pronounced by one of us which is reported in *Musammam Phuljhari v. Har Prasad* (4).

The present appellants have brought this suit for a declaration that they are the co-sharers in a certain mahal and not the defendants-respondents. They were met with the objection that in a suit for partition decided in 1921 both these parties were arrayed on the same side and were thereby made parties to the partition. In that suit they were both allotted undivided shares in a joint mahal, and it is argued that a suit in the civil court is now barred to them by the provisions of section 233(k) of the Land Revenue Act. *Prima facie* clause (k) of section 233 does not apply to a suit for determination of proprietary title as such. It lays down that no person shall institute any suit "for partition or union of mahals except as provided in sections 111 and 112." This is not a suit for partition or union of a mahal, but it is a suit for a declaration that the plaintiffs and not the defendants are the persons entitled to be recorded as co-sharers in a mahal. It has however been laid down by several authorities that this clause should be extended to cover cases where the decision required from the civil court would materially affect the partition of shares which had already been ordered by the revenue court. The broad principle on which the

(1) (1925) 2 O.W.N., 872.

(2) (1920) I.L.R., 42 All., 309.

(3) (1930) 28 A.L.J., 1046.

(4) (1926) I.L.R., 1 Luck., 318.

decision of the Judicial Commissioner in the case reported in *Baij Nath Singh v. Bahadur Singh* (1) is based is stated as follows: "If a question of title is not raised, as it ought to be, during a partition in the revenue court, it cannot be raised subsequently in a civil suit, the provisions of section 233(k) of the Land Revenue Act being a bar to the civil suit." In the judgment of the Judicial Commissioners there is much which favours the view taken by the respondent in the present suit, but we observe that in one passage Mr. DALAL appears to have accepted the decision of the Allahabad High Court reported in *Lal Bihari v. Parkali Kunwar* (2) as being good law. He seeks to differentiate it from the suit before the Bench on the ground that in that case "one mahal was allotted to all the parties jointly who were parties on the opposite sides in the civil court." If the Allahabad decision was to be differentiated on these grounds we are of opinion that the present case also should be differentiated from that decided by the Judicial Commissioners on the very same grounds for here too the contesting parties in the civil court had one mahal allotted to them jointly in the revenue court. The lower appellate court has relied on a decision of the Chief Court in the case of *Ajodhya Prasad v. Lakhpat* (3), but in our opinion that decision is not applicable to the present case. The decision there was confined to this: "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." This shows that the extension of the meaning of clause (k) of section 233 to which we have referred has been made by the courts with a special object, namely, to prevent a decision of the civil court interfering with a specification of shares

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(1) (1925) 2 O. W. N., 872.

(2) (1920) I.L.R., 42 All., 309.

(3) (1928) I.L.R., 4 Luck., 291.

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already made by the revenue court. In the case before us the civil court has not been asked to make any interference with the decision of the revenue court. The applicant for partition sought only that his own share should be made into a separate mahal. There was no division among the other co-sharers as none of them desired it. In the present suit no attempt is made to interfere with any distribution of shares made by the revenue court. All that the plaintiffs ask is a determination of their own proprietary title as against that of the defendants who, they say, have no rights in the mahal against themselves. Nothing in the decision of the revenue court in partition proceedings will be affected by the success of the plaintiffs in the present suit and we cannot see either that this case is barred by the provisions of section 233(k) of the Land Revenue Act or that any question of constructive *res judicata* can be said to arise. There was no need for the other co-sharers to apply for a determination of their own shares *inter se* in the partition proceedings or to raise a question of title among themselves which only became relevant when their own shares came to be divided. Thus we are entirely in agreement with the view expressed by the Allahabad High Court both in *Lal Bihari v. Parkali Kunwar* (1) and in the very recent decision in *Data Din v. Nohra* (2), and we consider that the single Judge decision of one of us reported in *Musammat Phuljhari v. Har Prasad* (3) is a correct exposition of the law.

We accordingly allow this appeal with costs, set aside the decree of the lower appellate court and restore the decree of the Munsif of Amethi.

*Appeal allowed.*

(1) (1920) I.L.R., 42 All., 309.

(2) (1930) 28 A.L.J., 1046.

(3) (1926) I.L.R., 1 Luck., 318; 3 O.W.N., 181.