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continues, the suit cannot be barred by limitation. Although certain observations in *Chukkun Lal's* case (1), which was a suit for the construction of a Will by a reversioner, may seem to support this view, I think with great respect that, if it was intended to lay down the general proposition that there is a continuing right to a declaratory decree in respect of property so long as the right to the property is not extinguished, the proposition is too widely stated. The principle of section 23 of the Limitation Act, which deals with continuing wrongs, can have no application to a declaratory suit and there is no recurring cause of action for a declaratory relief. It is to be noted that the decision in *Chukkun Lal's* case (1) has been reversed by the Privy Council in *Lolit Mohan Roy* v. *Chukkun Lal* (2) on another point. Their Lordships did not consider the question of limitation but I venture to think that limitation began to run when the defendant did the first act prejudicial to the plaintiff's title.

In any event the facts of the present suit are different and it is in my opinion clearly barred by limitation as it was instituted more than six years after the date of the alienation.

The result is that the appeal is dismissed with costs.

Ross, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Mullick and Ross, J.J.

RADHAKANTO PARHI

v.

MATHURA MOHAN PARHI.*

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Estates Partition Act, 1897 (*Ben. Act V of* 1897), *sections* 5, 4(2), 30 *and* 115—*Proprietor entitled to fractional share in*

* *Circuit Court, Cuttack.* Appeal from Original Decree No. 4 of 1921.

(1) (1893) I. L. R. 20 Cal. 906.

(2) (1897) I. L. R. 24 Cal. 834; L. R. 24 I. A. 76.

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entire estate and also fractional share in specified mouzas, *method of partition—fractional share in specified villages, how calculated—application for amalgamation of shares, when may be made—Jurisdiction of civil court to declare partition void, discussion on.*

Clause (3) of section 5 of the Estates Partition Act, 1897, applies only to cases where a proprietor has an undivided share held in common tenancy in specific *mouzas* forming part of the parent estate, that is to say, it applies only to proprietors who have an interest in some out of the total number of villages constituting the estate.

Clause (5) of section 5 applies to cases where a proprietor has an interest falling within clause (1) and clause (3), that is to say, where he has an estate and also an undivided fractional interest in certain specified *mouzas*. A proprietor of a *mahal* which is composed of more than one *mouza* and who is in possession of a fractional interest in each is not entitled to claim an allotment in each *mouza* representing his assets in that *mouza*.

Where a proprietor has an undivided share in some out of the total number of villages constituting an estate and also an undivided share in the remainder, then he has an undivided fractional share in the entire estate as well as an undivided fractional share in a part, the latter fractional share being the difference between the larger and the smaller share.

Therefore, where a proprietor has an eight-annas, *i.e.*, one-half share in 20 *mouzas* of an estate comprising 74 *mouzas*, and also a 2-annas 8-pies share (*i.e.*, a one-sixth share) in 54 of those *mouzas*, then his fractional share in the entire estate is one-sixth and his fractional share in the 20 *mouzas* is one-third and he is not entitled to an allotment within the 20 *mouzas* in proportion to his half-share in the same and an allotment in the remainder in proportion to his one-sixth share.

Under section 4(2) one or more sharers may, at any stage, apply to have their interests formed into one separate estate to be held as a joint undivided estate. Therefore such an application may be entertained without contravening the provisions of section 30 even after each of the co-sharers has been given a separate block.

Per Mullick, J.—The mere fact that a Deputy Collector in effecting a partition proceeds under clause (5) instead of under clause (3) does not entitle the civil court to entertain

a suit for a declaration that the proceedings of the Deputy Collector were without jurisdiction. Section 119 is a bar to such a suit.

A court is said to exercise jurisdiction when it exercises its powers to adjust any jural relationship between the parties. Jurisdiction in this sense must relate to the subject-matter, pecuniary value, locality and parties: it must be distinguished from power to do something ordained by statute.

Kalanand Singh v. *Kamlanand Singh*(1) and *Raghunath Prasad Narayan Singh* v. *Khajeh Muhammad Gawhar Ali*(2), distinguished.

Appeal by the plaintiffs.

The facts of the case material to this report were as follows:—

This appeal arose out of a proceeding instituted before the Collector of Balasore for the partition of Mahal Krishnapur in that district. The original proprietor, Chakradhar Parhi, left four sons named Shyama Charan, Bishnu Mohan, Purusottam and Hrusikesh. The plaintiffs, who were three in number, belonged to the branch of Bishnu Mohan and the first seven defendants belonged to the branch of Shyama Charan. The original applicants for partition in the Collector's Court were Jagamohan (defendant No. 4), Gokul (defendant No. 5), Sricharan (father of defendant No. 6) and Banchhanidhi (defendant No. 6) who jointly owned an 8-pies interest in the *mahal*, but after the service of the necessary notices, thirty-seven other persons who had acquired title by purchases from the original proprietor were joined in the proceeding. The Collector in his final award divided the parties into twenty-two separate groups marked *A* to *V* and as there was no dispute as to the particular persons who fell within each of these groups, they are referred to in the judgment by their respective letters. They or their representatives were parties in the present suit and in the judgment they also are referred to by their groups.

(1) (1912) 14 Ind. Cas. 225. (2) (1905) 2 Cal. L. J. 351.

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The proceeding was instituted on the 12th of January, 1914, in respect of seventy-four *mauzas*. On the 28th of October, 1916, the Deputy Collector, Mr. Bose, made a general arrangement allotting *mauzas* or parts of *mauzas* to the various parties. The present plaintiffs were by purchase in possession at the time of the application for partition of the following interests in the *mahal*: (*1*) a 2-annas 7-pies share in the entire *mahal*; and (*2*) a 5-annas 4-pies share in twenty *mauzas*; and the Deputy Collector placing them in group *F* allotted to them a portion of *mauza* Mandari and either the whole or part of seventeen other *mauzas*, estimating their assets at Rs. 10,787-10-4. Thereupon objections were filed by the various claimants and on the 27th August, 1917, Deputy Collector, Mr. Roy, who had by that time succeeded Mr. Bose, made an allotment approving of the general allotment made by his predecessor. On the 4th of December, 1917, in consequence of objections made by the claimants the matter was placed before the Collector and he disapproved of the mode in which the partition was being made and directed the Deputy Collector to proceed under sub-clause (*4*) of section 5 of the Bengal Estates Partition Act and not under sub-clause (*1*) of that section which the Deputy Collector appeared to him to have done.

By orders, dated the 21st and 22nd of March, 1918, Mr. Roy made an allotment assigning to the plaintiffs *mauzas* Paruhan, Uhar and Nuagan in their entirety and a portion of Mandari, which were four of the twenty *mauzas* in which the plaintiffs had acquired a 5-anna 4-pies interest as above mentioned. Out of the fifty-four remaining *mauzas* of the estate he assigned to the plaintiffs the whole of fifteen and part of two *mauzas*.

On the 4th of September, 1918, the Collector again disapproved of this allotment and he restored Mr. Bose's arrangement by allotting to the plaintiffs the entire *mauza* Mandari with the exception of a strip in the north, and by disallowing the allotment made in favour of the plaintiffs in respect of *mauzas*

Paruhan, Uhar and Nuagan. This last order of the Collector's was confirmed by the Commissioner; and finally also by the Board of Revenue on the 26th June, 1919, in spite of an appeal preferred by the plaintiffs.

The result therefore was that in regard to the twenty *mauzas* in which the plaintiffs acquired a 5-anna 4-pies share (subsequently to the acquisition of a 2-anna 8-pies share in the entire *mahal*) their interest now extended only to a part of *mauza* Mandari, the assets of that interest being a sum of Rs. 5,234-12-11.

They claimed that they were entitled under the provisions of section 5, sub-clause (*3*), of the Bengal Estates Partition Act to have lands in one or more *mauzas* out of the above twenty *mauzas* the assets of which would equal their entire assets in the twenty *mauzas*, namely, the sum of Rs. 6,506-1-11.

There was no dispute that the plaintiffs had, in the entire *mahal*, got lands the assets of which are equal to their assets in the entire *mahal* which, according to the figure contained in the judgment of the Deputy Collector, dated the 21st of March, 1918, was a sum of Rs. 10,839-1-0, exclusive of the plaintiffs' interest in certain sea-shore lands with which the present suit was not concerned.

Having failed before the Board of Revenue the plaintiffs instituted the present suit for the following reliefs:

(*a*) That it be declared that the partition made by the Revenue authorities is irregular and illegal and *ultra vires*;

(*b*) That it be declared that the plaintiffs are entitled to get assets to the extent of 8 annas interest in the 20 specific villages mentioned in *Schedule A* annexed to the plaint and to the extent of 2 annas 8 pies share in the remaining *mauzas* of the *mahal*.

The Subordinate Judge who tried the suit found that if there had been any disobedience of the statutory provisions of the Bengal Estates Partition Act on the part of the Revenue authorities that disobedience at most amounted to an irregularity and that a suit in the Civil Court for a declaration that the partition

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was held without jurisdiction did not lie. He accordingly dismissed the suit and the plaintiffs preferred the present appeal to the High Court.

S. A. Asghar (with him *G. P. Das* and *B. N. Das*), for the appellants.

B. N. Sinha, *B. R. Chaudhuri*, *S. N. Roy* and *S. C. Chatterjee*, for the respondents.

MULLICK, J., (after stating the facts as set out above, proceeded as follows) :—

Now, the first question that arises is whether in fact any error was committed by the Revenue authorities? If the Revenue authorities complied with the provisions of the Bengal Estates Partition Act then clearly no suit can lie. The matter turns upon the construction of section 5 of the Bengal Estates Partition Act (Act V, B.C., of 1897) which runs as follows :

" (*1*) If the interest of any recorded proprietor who is entitled to claim partition is an undivided share in an estate held in common tenancy, he shall be entitled to have assigned to him as his separate estate, land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

(*2*) If the interest of such recorded proprietor is the proprietary right over specific *mauzas* or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said *mauzas* or lands.

(*3*) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific *mauzas* or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific *mauzas* or tracts of which the assets shall bear the same proportion to the assets of such specific *mauzas* or tracts as his undivided share in such specific *mauzas* or tracts bears to the entire *mauzas* or tracts :

Provided that, if the interest of such recorded proprietor consists of such an undivided share in more than one *mauza* or tract, he shall not be entitled to have land assigned to him in every such *mauza* or tract, but the Collector may assign to him as his separate estate land situated in any one or more of the said *mauzas* or tracts subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such *mauzas* or tracts.

(*4*) If the interest of such recorded proprietor consists partly of land held in severality, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to

his share added to the land held by him in severalty, and the estate thus formed shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

(5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down."

It is contended by the learned Counsel for the appellants that as a result of the plaintiff's purchase of the 5-annas 4-pies share in the twenty *mauzas* they, at the time of the partition, became possessed of an 8-anna share in twenty *mauzas*, and of a 2-annas 8-pies share in the remaining fifty-four *mauzas*, and that under the provisions of sub-clause (3) of section 5 they were entitled in one or more of the twenty *mauzas* to an allotment of which the assets shall be proportionate to their total interest in the entire twenty *mauzas*.

The learned Counsel also applies the same principle to the 2-annas 8-pies interest of the plaintiffs in the remaining fifty-four *mauzas*.

In my opinion this contention is unsustainable. Sub-clause (3) of section 5 applies only to cases where a proprietor has an undivided share held in common tenancy in specific *mauzas* forming part of the parent estate but where he has no interest which extends over the whole estate; in other words, it applies only to proprietors who have an interest in some out of the total number of villages constituting the estate. If he has a share in the remainder also, then it follows that he has a fractional interest in the entire estate as well as a fractional interest in a part, the latter fractional interest being the difference between the larger and the smaller interest; that is to say, if, as in this case, he has a half-share in twenty *mauzas* and a one-sixth share in fifty-four *mauzas*, it must be held that he has a one-sixth share in the entire estate and in the twenty *mauzas* a fractional interest represented by the difference between one-half and one-sixth. That is the view taken by the Deputy Collector, who passed the order, dated the 28th August, 1917. Although the Collector appears from his order, dated the 4th of

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December, 1917, to have been of the erroneous opinion that the case fell within sub-clause (*4*) of section 5, in the result his final order of the 4th September, 1918, was correct. The plaintiffs in fact are proprietors coming within sub-clause (*1*) and sub-clause (*3*) of section 5 and, therefore, under sub-clause (*5*), the Deputy Collector was entitled to make the allotment as far as possible in accordance with the principles contained in the first two of these sub-clauses. In this case it has been found impracticable to give to the plaintiffs in *mauza* Mandari or in any other *mauza* within the twenty *mauzas*, an interest which will compensate the plaintiffs for their entire interest in the twenty *mauzas*. So the Deputy Collector has assigned to the plaintiffs an interest in *mauza* Mandari only to the extent of Rs. 5,234-12-11 and has allotted lands in *mauzas* other than the twenty *mauzas* to compensate for the balance of the plaintiffs' assets in the twenty *mauzas* which amounts to Rs. 1,271-5-0.

And even if it be held that the case is one falling exclusively within sub-clause (*3*) then under the proviso to that sub-clause the Deputy Collector was entitled to give the plaintiffs their 8-annas share in the twenty *mauzas* and their 2-annas 8-pies share in the remaining *mauzas*, in any one or more *mauzas* of either group. As I read this sub-clause a proprietor of a *mahal* which is composed of two *mauzas* and who is in possession of a fractional interest in each is not entitled to claim an allotment in each *mauza* representing his assets in that *mauza*; such a construction would defeat the entire principle of compactness where there are many villages and when the proprietor holds a different fractional interest in each.

It is next contended on behalf of the appellants that the allotment contravenes sub-clause (*3*) because the plaintiffs have not obtained in *mauza* Mandari, which is the only *mauza* appertaining to the group of twenty *mauzas* which has been allotted to them, an interest equal to their interest in the entire group. Now although the assets of their half-share in the twenty *mauzas* are Rs. 6,506-1-11 the assets of their

5-annas 4-pies share amount only to Rs. 4,400, and as this is a case falling under sub-clause (5) and as lands of which the assets are Rs. 5,234-12-11 have been allotted to them in Mandari, there has been a strict compliance with the terms of the statute. He is only entitled to land within the twenty *mauzas* of which the assets are Rs. 4,400 and that claim has been more than satisfied.

On the merits, therefore, it seems clear that the Deputy Collector has not only acted with jurisdiction but that he has fully complied with the law, and, therefore, the general question as to the jurisdiction of the Civil Court to set aside Revenue partitions does not really arise in this case.

The second point that was made by the learned Counsel for the appellants was that there had been a failure to comply with the provisions of section 30 of the Act inasmuch as the claimants in groups *A*, *B*, *K* had been allowed at a late stage of the proceedings to claim one joint block. It appears that in the preliminary stages they had each applied for a separate block in the Court of the Deputy Collector; but that after the general arrangement had been made, they changed their minds and wished to have one compact block in joint tenancy. There is no provision of law forbidding such a request. The Deputy Collector granted it and the terms of section 4(2) of the Act clearly show that it is open to one or more co-sharers to ask that their interest shall be formed into one separate estate to be held as a joint undivided estate. There is no limitation as regards the stage at which such an application can be made; and, in my opinion, there was no irregularity in the Deputy Collector's having entertained the application even after he had made the general arrangement and had given each of these co-sharers a separate block.

Finally the question of jurisdiction has been argued before us at some length and although it does not arise in the view I take, I will deal with it shortly. Jurisdiction, I think, in reference to the matter before us, must mean the power or authority to judge and a

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Court is said to exercise jurisdiction when it exercises its power to adjust any jural relationship between the parties before it. The exercise of jurisdiction with which we can here interfere must relate to the subject-matter, pecuniary value, locality or the parties; these are the matters which form the foundation of a Court's jurisdiction, and if a Court wrongly assumes that the foundation exists when in fact it does not exist then and then only it is wrongly exercising jurisdiction. But jurisdiction in its wider sense is sometimes understood to mean the power to do certain specific things which are ordained by statute; it is in the narrower sense that we must understand the word here. If the Court has assumed jurisdiction correctly, that is to say, if by reason of its local situation or pecuniary authority, or by reason of the subject-matter, or the position of the parties the Revenue Court had power under the statute to entertain the partition proceeding, then, in my opinion, every error made in carrying out the partition in accordance with the terms of the law would not necessarily invalidate the proceeding and render it null and void. As has been often observed a Court has jurisdiction to decide wrongly as well as rightly and if the Deputy Collector has, in making the partition, disobeyed the provisions of sub-clause (*3*) of section 5 of the Estates Partition Act and instead of making an allotment under that sub-clause he has proceeded under sub-clause (*5*) then that error cannot be remedied in a Civil Court Section 119 of the Estates Partition Act would, in my opinion, be a clear bar. Where the foundation of jurisdiction does not exist as in cases where a Revenue sale is held though there is no arrear of revenue at all, or a certificate sale is held in execution of a certificate issued without authority, a Civil Court has an undoubted right to declare the sale to be a nullity and to restore the property to the owner. So again where a property such as a burial ground, which the Estates Partition Act forbids the Deputy Collector to partition, is partitioned, I think a suit will lie to declare that the partition so far as the burial ground is concerned is null and void; but if the Deputy Collector merely

commits an error of law, it would be contrary to principle to hold that a Civil Court can interfere for the purposes of readjusting the arrangement and making a fresh partition.

But, then, the learned Counsel for the appellants contends that in the case before us a question of title or interest in the parent estate is involved and therefore the appellants are entitled, on the authority of *Kalanand Singh* v. *Kamlanand Singh* (1) and *Raghunath Prasad Narayan Singh* v. *Khajeh Muhammad Gawhar Ali* (2), to obtain a declaration that they have an 8-annas share in the twenty *mauzas*. In my opinion these decisions have no bearing on the present case. What was decided in these cases was that it was open to a party to sue for a declaration to, and possession of a property if his interest or title to such property had been affected by the Deputy Collector's proceeding. Sections 23 to 27 of the Estates Partition Act expressly recognize the jurisdiction of a Civil Court to make decrees in these matters, and there can be no question that section 119 would not bar a suit for declaration of title or of the extent of interest claimed by a recorded proprietor if aggrieved by an order made by the Deputy Collector under section 23. In the present case there is no denial whatsoever that the plaintiffs are entitled to an 8-anna interest in the twenty *mauzas* and obviously no declaration in this respect need be given. The sole question is whether it is open to the plaintiffs to get a declaration that the proceeding of the Deputy Collector was null and void by reason of his having misconstrued the provisions of section 5 of the Act. In my opinion such a suit would not lie and the learned Subordinate Judge was right in dismissing it.

The result is that the appeal is dismissed with costs to the contesting respondents only.

ROSS, J.—I agree that the appeal should be dismissed; and, for the reasons given by my learned brother, I hold that the partition conformed to the requirements of section 5 of the Act.

Appeal dismissed.

(1) (1912) 14 Ind. Cas. 225. (2) (1905) 2 Cal. L. J. 361.