

APPELLATE CIVIL.

Before Das and Ross, J.J.

SHEIKH QAMAR HASAN

v.

SAIYID ABAS ALLI.*

1924.

March, 11.

Estates Partition Act, 1897 (Bengal Act V of 1897), sections 7 and 77—private partition—certain lands left ijmal—whether a subsequent collectorate partition is barred.

Where the parties were in separate possession of certain lands by private arrangement and admittedly a large area remained *ijmal*, and the question was whether section 7 was a bar to a Collectorate partition, *held*, that section 7, Estates Partition Act 1897, contemplates a complete partition, and in view of the outstanding *ijmal* property, it could not be said that there had been a complete partition of the lands of the estate by private arrangement. It might be that section 7 does not require that all the lands of the estate should have been divided, but at all events the division by private arrangement must have been substantially of the whole estate.

Shah Tajammul Ali v. Mussod Ali(1), followed.

Held, also, that the opinion of the Revenue-authorities within whose special jurisdiction the partition of estates rests is entitled to all respect and the civil court will not interfere with the decision of the Revenue authorities except on the clearest proof that that decision is wrong.

Appeal by the plaintiffs.

This was an appeal against a decree of the Subordinate Judge of Saran in a suit brought by the plaintiffs-appellants for a declaration that *mahal* Bhawarajpur, Belahi and Mohsilpur, *tauzi* No. 63, in the district of Saran had already been privately and

* Appeal from Original Decree No. 131 of 1921, from a decision of M. Mahmud Hasan, Subordinate Judge of Saran, dated the 26th February, 1921.

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regularly partitioned with the consent of all the proprietors and that the defendants had no right to get a fresh partition made and that the dismissal of the plaintiffs' petition objecting to the making of a fresh partition by the Collectorate was illegal and that the *patti* formed by partition and allotted to the plaintiffs could not be partitioned afresh by the Collectorate.

The plaintiffs' case was that long ago *tauzi* No. 63 was privately partitioned so far as culturable lands were concerned, and that 284 *bighas* of saltpetre lands, tank, river, *etc.*, which were not capable of being partitioned, were left *ijmal*; that four *pattis* were formed—*patti* Madar Baksh 4-annas, *patti* Mir Ali and Waris Ali 4-annas, *patti* Didar Baksh, Wazir Ali and others 2-annas, and *patti* Teg Ali and Eyad Ali 4-annas—making in all 14-annas, of which it was said *tauzi* No. 63 consisted, the other 2-annas of the *mahal* being *tauzi* No. 62. In 1832 the proprietors applied for a partition by the Collector and an *amin* made a regular survey of all the *pattis* and prepared a *khesra* which was accepted by all the proprietors. But on account of some technical defect the partition case was dismissed in 1841 and the *tauzi* was not separated, but the proprietors continued to be in possession of the lands in their respective *pattis* while the *ijmal* lands remained joint. The two 4-annas *pattis* Madar Baksh and Teg Ali and Eyad Ali subsequently became united in a single proprietor so that there were then three *pattis* of 8-annas, 4-annas and 2-annas in the separate possession of their owners. It was said that in the settlement proceedings of 1895 *khewats* and *khatians* were prepared *patti* by *patti*. The plaintiffs were the owners of the 2-annas *patti* which consisted of 290 *bighas* 11 *kathas* and 11 *dhurs* of land. The defendants Nos. 1 to 6 and No. 9 applied to the Collector for a fresh partition and the plaintiffs' objections under sections 7 and 77 of the Estates Partition Act (Act V of 1897) were rejected by the Revenue Officers.

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The defendants denied that all the lands of *tauzi* No. 63 were privately and regularly partitioned. It was said that the *batwara* proceedings referred to in the plaint were not given effect to and remained incomplete. The record-of-rights showed that a good deal of *abadi* and other lands from which income was derived was in joint possession of all the proprietors and that, therefore, the plaintiffs were not entitled to the benefits of sections 7 and 77 of the Estates Partition Act. It was also alleged that different proprietors had kept different lands in their occupation simply for convenience of cultivation. The Subordinate Judge found that in the *batwara* of 1832 the *shamilat* lands were 263 *bighas* 18 *kathas* and 16 *dhurs*, but that the areas given in the cadastral survey and revisional survey were different, and that it was not clear whether the partial *pattibandi* of *tauzi* No. 63 was in respect of lands or tenants. He held that section 7 of the Estates Partition Act was not a bar to the partition. He gave a modified decree to this extent that the parties were in separate possession of certain lands regarding which he made a suggestion that this fact might be taken into consideration as far as possible in affecting partition.

Saroshi Charan Mitter, for the appellants.

Lachmi Narain Sinha, Jadubans Sahay, Parmeshwar Dayal, Syed Ali Khan and Hareshwar Prasad Sinha, for the respondents.

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

The question for decision is whether the lower Court's interpretation of section 7 of the Estates Partition Act of 1897 is correct. That section lays down:

"Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of

separate lands to be held in severalty as representing his interest in the estate, no partition of the estate shall be made under this Act except—

- (a) on the joint application of all the proprietors, or
 (b) in pursuance of a decree or order of a Civil Court.”

The Revenue Authorities, within whose special jurisdiction the partition of the estates rests, have held the view that this section is no bar to a Collectorate partition. That opinion is entitled to all respect and the Civil Court will not interfere with the decision of the Revenue Authorities, except on the clearest proof that that decision was wrong. It was held in *Shah Tajammul Ali v. Mussod Ali* (1) that section 7 contemplates a complete partition. Now, it is admitted that an attempt was made to have a complete partition between 1832 and 1841 which was not carried out. If there had been a complete private partition before that date it is difficult to see why, if all the proprietors joined in seeking a Collectorate partition, the proceedings should have been left incomplete. It is admitted in the present case that a large area of 284 *bighas* was left *ijmal*. This area is practically as large as the 2-annas *patti* of the plaintiffs; and, in view of this outstanding *ijmal* property, it cannot, I think, be said that there has been a complete partition of the lands of the estate by private arrangement. It may be that section 7 does not require that all the lands of the estate should have been divided, but at all events the division by private arrangement must have been substantially of the whole estate. In view of the comparatively large area that was left undivided, some of which is rent-producing land, I do not think that it can be held that the Revenue Authorities were in error in holding that a Collectorate partition could be made.

I would, therefore, dismiss this appeal with costs.

DAS, J.—I agree.

Appeal dismissed.

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