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family at the time of partition. The last item Rs. 22,335-15-11½ unquestionably represents the existing income from the immoveable properties. The commissioner's account represents the existing state of affairs at the time of the partition of the properties that were found as belonging to the family at that time. Though it is expressed in figures, the aforesaid sum of Rs. 60,426 and odd is the value of the properties, etc., that fell to the share of the plaintiffs at the time of partition.

I would therefore hold that the present suit is one for partition and is governed by Article 17, clause (*vi*), of Schedule II of the Court-fees Act, and the memorandum of appeal is sufficiently stamped.

APPELLATE CIVIL.

Before Terrell, C. J. and Ross, J.

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Jan., 25, 28, 29, 30. Mar., 4.

RAMBAHADUR SINGH

v.

MAHARAJA BAHADUR KESHAVA PRASAD SINGH.*

Estates Partition Act, 1897 (*Bengal Act V of* 1897), *section* 90 *et seq and* 119—*final order by the Commissioner or Board—possession of estates delivered by Collector—section* 94 (1)—*order, whether can be challenged in Civil Court—Bihar and Orissa Board of Revenue Act* 1913 (*B. & O. Act I of* 1913), *section* 6 (*1*)—"*Review*", *scope of—whether controlled by section* 114, *Code of Civil Procedure*, 1908 (*Act V of* 1908).

When, on the receipt of a final order of the Board of Revenue, passed in the first instance or on review, the Collector gives possession to the several proprietors of the separate estates allotted to them under section 94 (*1*) of the Estates Partition Act, 1897, his action in so doing cannot be challenged in the Civil Court by reason of section 119 of the Act.

*Appeal from Original Decree no. 257 of 1924, from a decision of Babu Shyam Narayan Lal, Subordinate Judge of Shahabad, dated the 30th of May 1924.

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The scheme of the Estates Partition Act is to provide a special machinery under the Revenue authorities with exclusive jurisdiction for effecting partition, and that machinery is separate and apart from that of the Civil Courts.

Section 6 (*1*), Bihar and Orissa Board of Revenue Act, 1913, provides :

"Any person considering himself aggrieved by any order of the Board of Revenue may apply to the Board for a review of the same; and, if the Board considers there are sufficient reasons for so doing, it may review the order and pass such further order as it thinks fit."

Held, that section 6 (*1*) is not controlled by section 114, Code of Civil Procedure, 1908, which does not apply to proceedings under the Estates Partition Act, 1897, and that, therefore, the Board exercising its jurisdiction on an application for review, is not confined to such matters as newly discovered facts which could not with due diligence have been disclosed at the original hearing by the party applying for review.

Appeal by defendants.

The facts of the case material to this report are stated in the judgment of Terrell, C. J.

S. Hasan Imam (with him *Murari Prasad*, *Sambhu Saran* and *Mehdi Imam*), for the appellants.

Manuk (with him *M. Yusuf*, *N. N. Sinha*, *L. N. Singh*, *Dhanendra Nath Varma*, *H. P. Sinha*, *S. N. Hasan*, *S. Lal*, *C. P. Sinha*, *D. Chandra* and *H. R. Kazmi*), for the respondents.

4th March, 1929.

COURTNEY TERRELL, C. J.—This is an appeal from a judgment of the Subordinate Judge of Shahabad by which he decreed a declaration that a resolution, dated January 29th, 1923, of the Board of Revenue, was of no effect and that an earlier resolution of the Board under the Estates Partition Act, dated November, 22nd, 1922, effecting a partition of an estate known as Mahal Tardih was valid and unaffected by the first mentioned resolution.

There are in this appeal three questions for decision:—(*a*) whether the appeal to this Court has

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abated by reason of the death of one of the parties, (*b*) whether the resolution declared invalid was really invalid, and, (*c*) whether the Court had jurisdiction to grant the relief claimed and decreed.

The material facts are as follows:—Maharaja Bahadur Keshava Prasad Singh of Dumraon applied under the Estates Partition Act for the partition of the estate which consisted of 17 villages. The other co-sharers joined in the application and there were in all five parties to the proceedings, each save the first consisting of a number of individuals. Party no. 1 the Maharaja owned a 5 annas 4 pies share. Parties nos. 2 and 5 owned a very small share. Parties nos. 3 and 4 each owned a 4 annas 9 pies share.

The Collector, on the 13th June, 1921, made an order effecting the partition. As to one village named Dorasna he divided it between parties nos. 1, 3 and 4 giving no share to party no. 2. It appears that adjoining village Dorasna are certain lime-stone quarries. These remained joint under the partition but all the proprietors joined in granting a lease thereof to a Company formed by one of party no. 4 and in that Company party no. 4 are share-holders. Parties nos. 1, 2 and 4 appealed to the Commissioner. Party no. 4 contended that it would not be possible to work the quarries unless the adjoining village Dorasna was given solely to it. The Commissioner upheld this view and he varied the order of the Collector by awarding Dorasna solely to party no. 4. That part of the Collector's order which related to party no. 2 he left unaffected.

Party no. 1 and Party no. 3 appealed from this decision to the Board of Revenue. Parties nos. 2 and 5 did not appeal being content with the decision of the Commissioner and though presumably served with notice of the appeal did not appear or take any part in the proceedings. The Board of Revenue varied the order of the Commissioner, and, holding

that the Company should be able to work the quarries satisfactorily even if parties nos. 1 and 3 were also given portions of Dorasna, restored the order of the Collector. The resolution of the Board of Revenue giving effect to this arrangement was dated November 22nd, 1922.

Party no. 4 later came to find that the scheme did not work satisfactorily. It appears, according to that party's case, that party no. 3 with the assistance of party no. 1 abused its position as the owner of a part of Dorasna by obstructing the building across its share of a light railway necessary for the working of the quarries by the Company. Party no. 4 therefore made an application to the Board of Revenue for a review of its resolution of November 11th, 1922, and made respondents parties nos. 1 and 3. A Mr. Leslie (who is the manager of the Company and the unregistered purchaser of a 1-pie share in the interest of party no. 4) appeared before the Board of Revenue and presented the grievance felt by the Company and by party no. 4 as members thereof. The Board of Revenue, as represented by Mr. Morshead, the Member, heard the parties and ultimately passed the resolution of which the validity is in dispute in this appeal. In the resolution he explained that at the original hearing he had not realised that the railway would pass over that part of Dorasna which he had allotted by the former resolution to party no. 3 and he restored the arrangement made by the Commissioner so that the whole of Dorasna was now allotted to party no. 4.

Being dissatisfied with this state of affairs parties nos. 1 and 3 each commenced a suit in the Subordinate Judge's Court asking for a declaration that the review order of the Board was invalid. All the other parties and Mr. Leslie were made defendants. Party no. 1 also added a claim for consequential relief in the shape of an injunction and alternatively a claim to a decree for partition. The

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plaint of party no. 3 contained no claim for consequential relief and this suit was accordingly dismissed under section 42 of the Specific Relief Act. In the suit of party no. 1, party no. 4 and some of the individuals constituting party no. 3 put in written statements. Those defendants who were members of party no. 3 pleaded, as might have been expected, their admission of the plaintiff's contention that the review order complained of was invalid. The suit was contested by party no. 4 and by Mr. Leslie whose interests are identical with those of party no. 4. The decree was as follows:—

> "It is ordered and decreed modifiedly with costs against the contesting defendants in the presence of defendant first party" (*i.e.* party no. 4) "and the minor defendants of the second party" (*i.e.* those of party no. 3 who filed written statements) "and in the absence of others, that the Board's resolution, dated the 29th January 1923, be declared as ultra vires and of no effect and the partition as effected by the order of 22nd November 1922 be declared as valid and binding on all concerned."

From this decree party no. 4 has lodged an appeal and the other parties including party no. 2 have been made respondents. During the pendency of the appeal defendant no. 29 (who is a member of party no. 2) died and the appeal as against him abated. A belated application was made by the appellants to substitute his heirs and to set aside the abatement but this was refused by the Court. The respondents contend that the abatement of the appeal as regards this respondent has brought about the abatement of the entire appeal. It is not denied that whether the decree stands or falls the position of party no. 2 as regards the share allotted to it will not be changed but it is contended that this is a partition suit and that all the defendants are necessary parties as co-sharers. It is further said that as a co-sharer and a party to the lease of the quarries to party no. 4, party no. 2 and every member of it is interested in the result of the appeal however remotely and moreover that party no. 2 as a co-sharer is interested in any

decision which may affect the village Dorasna the main subject of the dispute. It is urged that party no. 2 may be directly affected by the result of the appeal since if the decision of the Subordinate Judge were set aside and party no. 2 were to come on to the land comprised in Dorasna party no. 4 would be able to treat party no. 2 as a trespasser whereas if the decree is allowed to stand only parties nos. 1 and 3 will be able to sue for trespass. Therefore it is said inasmuch as the appeal as against defendant no. 29, one of the members of party no. 2, has abated there will be conflicting decisions as regards the heirs of this defendant.

There are several answers to these contentions. Firstly the plaint claims no remedy by way of injunction against party no. 2 or any of its members and no decree for partition was made and on this appeal no partition is sought by the respondents. Therefore there has been no judgment against party no. 2 (or defendant no. 29 as a member of it) which could conflict with any decision arrived at on this appeal. In short, neither the decree of the Subordinate Judge nor the decision of this Court can affect party no. 2 or any member of it.

Moreover party no. 2 comprises defendants nos. 29, 30 and 31 who are brothers and members of a Hindu joint family. The other members of the party are defendants nos. 32, 33, 34 and 35 who are another set of brothers and also members of a joint family. The interest of the deceased defendant no. 29 is not therefore separable from that of his brothers and is moreover amply represented on this appeal in so far as any share is allotted or withheld from party no. 2. It is clear on the facts that the interests of defendant no. 29 and his heirs are not adversely affected by the decree and he could not have appealed from it. He is not therefore a necessary party to this appeal and the abatement of the appeal so far as he is concerned

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is of no importance. Moreover as will be seen later in view of my opinion on the merits no question of abatement of the appeal can arise.

The second question for decision is as to the validity of the resolution of the Board of Revenue, dated January 29th, 1923.

The procedure on partition with which we are concerned is regulated by the Estates Partition Act and by the Bihar and Orissa Act I of 1913. Under section 113 of the former Act an appeal lies from the decision of the Commissioner to the Board of Revenue which in this province and at the times material consisted of the single Member Mr. Morshead. It may be noted that under section 114 the Board may, on the application of the party aggrieved or even of its own motion call for the record of the case and pass such order as it may think fit. The powers of the Board of Revenue to review its own orders is now governed by the Bihar and Orissa Act I of 1913. By section 6, sub-section (*1*), of that Act—

> "Any person considering himself aggrieved by any order of the Board of Revenue may apply to the Board for a review of the same: and if the Board considers there are sufficient reasons for so doing it may review the order and pass such further order as it thinks fit."

Now it is contended that the word "review" and the words "if the Board considers there are sufficient reasons for so doing" connote the special interpretation given to the word "review" as used in section 114 of the Code of Civil Procedure. It is said that if this contention be well grounded then the Board in exercising its jurisdiction must have regard, on an application for review, only to such matters as newly discovered facts which could not with the exercise of due diligence have been disclosed at the original hearing by the party making the application for review; in short that the Board must proceed according to the principles of the Code of Civil Procedure guiding a Court of Justice on an application for a review of

its judgment. It is urged that the common law procedure code is imported into the Estates Partition Act and into the Act above quoted by reason of section 5 of the common law procedure code, the Local Government not having notified the Code as inapplicable to proceedings before Revenue Courts in partition proceedings. Section 5, however, must be read with section 4 which states that

"(1) In the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by or under any other law for the time being in force."

Sections 52 and 97 of the Estates Partition Act apply certain parts of the Code to proceedings under the Act and section 114 is not one of such parts so applied.

That the word "review" cannot have such a limited meaning is shown by reference to section 114 which gives to the Board power of its own motion to call for the record and pass any order it may think fit. If the powers of the Board are so wide in passing its original order there is no reason why they should not be equally wide in making an order of review; in fact equally wide powers in review are obviously necessary to prevent injustice. This attempt by the respondents to put a limited construction upon the word "review" was for the purpose of giving importance to the matters entertained by Mr. Morshead in hearing the application for review. First it is contended that upon the application he heard Mr. Leslie who was an unregistered proprietor and as such had no locus standi in the partition proceedings. But Mr. Leslie was merely the mouth-piece of his Company and he put forward the Company's case which is identical with that of party no. 4. Next, it is said that Mr. Morshead made the order without presentment of any new facts and that the course to be taken by the light railway was before him on the original appeal from the Commissioner. It is said

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that the realisation of this point by Mr. Morshead was not in the nature of a new fact but apart from my opinion of the meaning of the word "review" it is clear that anything which appeared to Mr. Morshead a "sufficient reason" justified him in making the order of review so that quite apart from the meaning of the word review the order of January 29th, 1923, was entirely valid.

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Lastly, there arises the question of the jurisdiction of the Civil Court to entertain this suit. Section 119 expressly exempts certain orders made under the Act (inter alia, any made under Chapter X) from attack in a civil suit. Chapter X of the Act comprising sections 90 to 96 inclusive provides for appeals from the Collector and section 90 gives to the Commissioner even in the absence of an appeal the right after hearing the parties to amend the order of the Collector. Section 91 empowers the Commissioner, if he considers no amendment necessary, to confirm the partition made by the Collector. Section 93 (*1*) provides as follows:—

"After the expiration of not less than sixty days from the date of the order of the Commissioner confirming a partition, or if an appeal has been preferred to the Board, or if any proceedings in respect of the partition be pending before the Board, then on receipt of the final order of the Board, if such order does not set aside but maintains, with or without amendments, the partition as confirmed by the Commissioner,

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be."

It is to be noted that throughout this sub-section an order of the Board confirming or amending an order of the Commissioner is treated in so far as the conduct of the Collector is concerned exactly like an order of the Commissioner.

Section 94, sub-section (*1*), begins as follows:—

"The Collector shall then proceed to give the several proprietors possession of the separate estates allotted to them, and, if necessary, may require the assistance of the Magistrate in giving such possession;"

The remaining sections of the chapter do not require notice.

Section 111 provides for appeals from the Deputy Collector to the Collector. Section 112 provides for appeals from the Collector to the Commissioner. Section 113 provides for appeals from the Commissioner to the Board of Revenue and section 114, sub-section (*1*), runs thus:—

"Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner no further appeal shall lie; but the Board, acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit."

It has been seen that when the final order of the Commissioner or the Board has been received by the Collector it is his duty to give the several proprietors possession of the separate estates allotted to them and his action in so doing cannot be questioned in a Civil Court.

It has been argued that section 119 while expressly withholding certain specified matters from the cognizance of the Civil Court makes no specific mention of orders of the Board under section 113 and therefore that although orders of the Collector and the Commissioner may not be attacked the prohibition does not extend to orders of the Board. That this is not the meaning of section 119 is further shown by the proviso to that section. After enumerating those parts of the Act under which orders are exempted from attack in the Civil Court, the section says:—

"Provided that—

(*i*) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 94 or section 86; or

(*ii*) any person who is aggrieved by an order made under section 88,

may bring a suit in a Court of competent jurisdiction to modify or set aside such order."

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In my opinion it is clear that the scheme of the Act is to provide a special machinery under the revenue authorities for effecting partitions and that machinery is quite separate and apart from that of the Civil Courts. It provides a system of tribunals from the Deputy Collector to the Board of Revenue with exclusive jurisdiction subject to the express provisions of the Act which alone permit the interference of the Civil Court. Therefore the Subordinate Judge had no jurisdiction to entertain this suit.

In my opinion the appeal succeeds, the decision of the Court below should be reversed and the contesting respondents should pay the appellant's costs throughout.

ROSS, J.—I agree.

Appeal decreed.

PRIVY COUNCIL.*

1929.

March, 5.

EKRADESHWARI BAHUASIN

v.

HOMESHWAR SINGH AND OTHERS.

Hindu Law—Widow's Maintenance—Arrears of Maintenance—Widow residing in parental home.

A Hindu widow who has left the residence of her deceased husband, not for unchaste purposes, and resides with her father, is entitled to maintenance, also to arrears of maintenance from the date of her leaving her husband's residence, although she does not prove that she has incurred debts in maintaining herself and gives no reason for the change of residence.

The maintenance should be such an amount as will enable the widow to live, consistently with her position as a

*PRESENT: Lord Shaw, Lord Darling and Sir Lancelot Sanderson.