

APPELLATE CIVIL

Before Adami and Chatterji, JJ.

SHEIKH MOHAMMAD SAIYEED

v.

GURSAHAY MAHTO.*

1929.

Jan., 30.

Estates Partition Act, 1897 (Ben. Act V of 1897), sections 29 and 119—Collector, order of, that an estate is liable to partition—suit for declaration that the estate was previously partitioned, whether maintainable in Civil Court.

A suit for a declaration that an estate under Collectorate partition has been previously partitioned within the meaning of section 7. Estates Partition Act, 1876, is maintainable in a civil court even where the Collector has already made an order under section 29 of the Act to the effect that the estate is liable to partition.

Manna Chowdhury v. Munshi Chowdhury(1) and *Narsingh Thakur v. Bishun Pragash Singh*(2), followed.

Beas Singh v. Baldeo Pathak(3), distinguished.

Appeal by the plaintiffs.

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

Janak Kishore and *Rajeshwari Prasad*, for the appellants.

S. M. Mullick, Braj Kishore Prasad and *J. C. Sinha*, for the respondents.

CHATTERJI, J.—This appeal arises out of a suit for a declaration that a certain estate in respect of which the defendant had applied for partition before the Collector was not liable to partition as there had been a completed partition of the estate within the

*Appeal from Appellate Decree no. 788 of 1926, from a decision of A. C. Davies, Esq., I.C.S., District Judge of Patna, dated the 15th May, 1926, reversing a decision of M. Syed Mohammad Zarif, Additional Subordinate Judge of Patna, dated the 14th October, 1925.

(1) (1918) 3 Pat. L. J. 188.

(2) (1923) 4 Pat. L. T. 629.

(3) (1928) I. L. R. 7 Pat. 510.

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meaning of section 7 of the Estates Partition Act, and for an injunction on the defendants restraining them from proceeding with the partition.

The learned Subordinate Judge passed a decree in favour of the plaintiffs, but the learned District Judge, while affirming the finding of fact that the estate had already been partitioned, dismissed the suit on the simple ground that the suit was not maintainable and that the Revenue authorities were the only persons competent to decide the question whether the estate had been privately partitioned or not.

Subsequent to the passing of that order it appears that the plaintiffs did go up before the higher Revenue authorities and they have decided that the estate could not be partitioned. But the learned Advocate appearing for the plaintiffs presses before us for an adjudication whether the suit is maintainable. The importance of the decision lies in the fact whether they would get costs of the proceeding or not.

In support of the contention that the suit is maintainable, reliance is placed on behalf of the appellants on *Manna Chowdhury v. Munshi Chowdhury*(¹) and *Narsingh Thakur v. Bishun Pragash Singh*(²).

On behalf of the respondents reference is made to *Beas Singh v. Baldeo Pathak*(³) where the view appears to have been taken that the Collector is the only authority to decide whether the estate has been previously partitioned.

Now section 9 of the Civil Procedure Code provides that the Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Therefore the Civil Court will necessarily have jurisdiction over this matter unless the jurisdiction is taken away expressly or impliedly by some statutory provision. Section 119 of the Estates

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Partition Act takes away the jurisdiction of the Civil Court in certain matters but section 29 of that Act under which the Collector passed the order that the estate was liable to partition is not one of the sections referred to therein. If really the Legislature intended that the Civil Court would have no jurisdiction over a matter like this merely because the Collector had passed an order that the estate was liable to partition, a specific provision would certainly have been made in the Act itself.

I think, therefore, apart from all authorities, the Civil Court has perfect jurisdiction in the matter. This view of mine is supported by cases of this Court referred to by the learned Advocate for the appellants which I have mentioned before. The case cited by the learned Advocate for the respondent is distinguishable from the facts of the present case, because there the partition had been completed, and even possession had been delivered. It is true that there are certain observations in that judgment which would go to indicate as if the Civil Court had no jurisdiction where an order had been passed by the Collector directing a partition of a certain estate; but the language of every judicial pronouncement must be understood as spoken in reference to the facts under consideration and limited in meaning to those facts. I think, therefore, that *Beas Singh v. Baldeo Pathak*⁽¹⁾ cannot be supported as an authority for the general proposition that a Civil Court has no jurisdiction at all. It is to be mentioned that reference is made by their Lordships, who decided that case, to section 119 as a bar to the Civil Court deciding that question afresh after it had been decided by the Collector. So they must have had in their minds the fact that the partition had already been completed. The completion of partition proceedings is provided for in Chapters VIII and X of the Estates Partition Act, and it will be noticed that section 119 of the Estates Partition Act specially provides that orders passed under these Chapters will not be liable to be contested

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in a Civil Court. Then *Manno Chowdhury v. Munshi Chowdhury*(1) amongst others was referred to by their Lordships in *Beas Singh v. Baldeo Pathak*(2), and there they distinguished that case on the ground that an injunction had been sought against the defendants restraining them from proceeding before the Collector in respect to a batwara which was being made. That is exactly the case here.

I am satisfied, therefore, that the Civil Court has ample jurisdiction in a matter like this and the view taken by the learned District Judge cannot be supported.

In the result the appeal is allowed, the decree of the learned District Judge set aside, and it is declared that the estate is not liable to partition and that the defendants be restrained by an injunction from proceeding with it.

The plaintiffs appellants will get their costs throughout which we direct must be paid by the major respondents.

ADAMI, J.—I agree.

S. A. K.

Appeal allowed.

APPELLATE CIVIL.

Before Das and Fazl Ali, JJ.

JAMUNA PRASAD SHAH

v.

FAUJDAR SHAHNI.*

Evidence Act, 1872 (Act I of 1872), sections 16 and 21—mortgage bond, recital in, as to receipt of consideration by mortgagor—whether admissible as against subsequent purchaser—want of consideration, onus on purchaser to prove—discretion of court to receive or reject documents filed late

*Appeal from Appellate Decree no. 1340 of 1928, from a decision of H. R. Meredith, Esq., I.C.S., District Judge of Muzaffarpur, dated the 7th June, 1926, confirming a decision of Babu Harihar Charan, Subordinate Judge of Champaran, dated the 7th April, 1925.

(1) (1918) 3 Pat. L. J. 188.

(2) (1928) I. L. R. 7 Pat. 510.

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