APPELLATE CIVIL.

Before Das and Allanson, JJ.

DOMA BHAGAT

v.

RAMANAND SINGH.*

1928.

June, 11.

Land Registration Act, 1876, (*Act VII of* 1876), *sections* 70, 72 *and* 74A, *scope of—application to close separate account —maintainability—civil court, jurisdiction of, to deal with the matter.*

Section 70, Land Registration Act, 1876, lays down :

" When a proprietor of a joint estate who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate..... desires to pay separately the share of the Government revenue..... he may submit to the Collector a written application to that effect. The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest. On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act XI of 1859.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant....."

Section 72 provides :

" Whenever any share in respect of which a separate account has been opened by the Collector..... under section 70, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers, any proprietor or manager whose name is borne on the General Register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is opened, may submit to the Collector a written application setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietors or managers, and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate, and praying that the separate account standing open in respect of such share shall be closed."

*First Appeals nos. 61 of 1926 and 85 of 1926, from a decision of Babu N. B. Chattarji, Subordinate Judge of Shahabad, dated the 25th January 1926.

1928.

DOMA BHAGAT v. RAMANAND SINGH.

Held, that section 72 gives a right to a proprietor to make an application for closing the separate account only when any share in respect of which a separate account has been opened by the Collector no longer corresponds with the character and extent of interest held in the estate by any one proprietor or manager, and that the section has no application to a case where a proprietor having been served with a notice under section 70, does not appear to contest the application under that section.

Held, further, that the question of distribution of the Government revenue is primarily the duty of the Collector and the civil court has no jurisdiction to deal with the matter.

Muddun Mohan Majoomdar v. *Poorno Chandra Gangooli* (1), *Hur Gobind Das* v. *Buroda Prasad Das* (2) and *Goluck Chunder* v. *Ram Huree* (3), distinguished.

The defendants were the appellants both in First Appeal no. 61 and in First Appeal no. 85.

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

N. C. Sinha and *N. C. Ghosh*, for the appellants, in no. 61.

Siva Saran Lal, Sant Prosad and Ragho Saran, for respondents nos. 7 and 10, in no. 61.

Gurusaran Prosad, for the appellants, in no. 85.

Siva Saran Lal, Sant Prosad and *S. Dayal*, for respondents 24 and 25, in no. 85.

DAS, J. At all relevant dates mahal Basantpur, bearing sadr jama of Rs. 715-2-8, consisted of eight mauzahs. There were partition proceedings at the instance of the owners of one of the mauzahs Saranpur which terminated in 1845. Saranpur, as a result of those proceedings, was constituted a separate estate and a sadr jama of Rs. 117-9-7 was fixed on it. In order to enable the revenue authorities to make an equitable distribution of the Government revenue

(1) (1869) 13 W. R. 67. (2) (1871) 15 W. R. 112.
(3) (1874) 23 W. R. 104.

between the two estates, namely, Saranpur and Basantpur, they had to consider the assets of each of the mauzahs and having considered the matter they fixed the Government revenue on mauzah Saranpur at Rs. 117-9-7 and the Government revenue on Basantpur comprising seven mauzahs at Rs. 597-9-1. In course of time Mr. Milne acquired the seven mauzahs constituting Mahal Basantpur. He proceeded to sell the mauzahs to the different defendants retaining one of the mauzahs, namely Gourua, for himself. It is not necessary to give the dates of sales of these mauzahs to the defendants. We are concerned with two of the mauzahs in these appeals, mauzah Kaithia which he sold to defendants 5-7 on the 9th March, 1915, and mauzah Khairia which he sold to defendants 10-13 on the 15th October, 1917. I have said that after selling six of the mauzahs Mr. Milne still had mauzah Gourua to himself. This he sold to one Bhabani Shankar on the 20th February, 1918. Bhabani Shankar sold the mauzah in question to the present plaintiffs on the 1st November 1923.

Meanwhile the purchasers made separate applications on different dates to the Collector for opening separate accounts in respect of the mauzahs purchased by them. On the 7th January, 1918, defendants 5-7 who are the appellants in F. A. 61 of 1926 applied under section 70 of the Land Registration Act for opening a separate account in respect of the mauzah purchased by them. The order sheet of the Collector shows that notices were served in accordance with law. In their application defendants 5-7 stated that the Government revenue heretofore paid on account of their undivided interest in the mahal was Rs. 73-12-0 No one objected to the application and on the 22nd May, 1918, the Collector opened a separate account in respect of mauzah Kaithia fixing Rs. 73-12-0 as the Government revenue payable in respect of mauzah Kaithia. On the 6th July, 1918, defendants 10-13 who are the appellants in F.A. 85 of 1926 made a

1928.

DOMA BHAGAT v. RAMANAND SINGH.

DAS, J.

similar application. They stated in their application that Rs. 71-14-0 was the Government revenue heretofore paid on account of mauzah Khairia. The order sheet shows that notices were served in accordance with law and there being no objection the Collector on the 28th October, 1918, opened a separate account in respect of mauzah Kharia fixing Rs. 71-14-0 as the Government revenue payable in respect of that mauza. I may mention that the other purchasers made similar applications and had separate accounts opened in respect of their mauzahs.

On the 8th January, 1920, Bhabani Shankar made an application by which he invited the Collector to close the separate accounts substantially on the ground that the Government revenue fixed by the Collector in respect of the mauzahs other than mauzah Gourua was inequitable so far as mauza Gourua was concerned. On the 21st February, 1920, the learned Collector declined to close the separate accounts; but referred Bhabani Shankar to the Civil Court. It appears that an appeal was carried by Bhabani Shankar to the Commissioner but the Commissioner rejected the appeal on the 22nd April, 1920. As I have said Bhabani Shankar sold the mauzah in question, namely Gourua, to the present plaintiffs on the 1st November 1923. The plaintiffs made another application to the Collector on the 17th July, 1924, asking the Collector to close the separate accounts. By his order dated the 17th July, 1924, the Collector declined to deal with the application; but referred the plaintiffs to the Civil Court. On the 2nd September, 1924, the suit out of which these appeals arise was instituted by the plaintiffs for the following reliefs:

"That it may be declared by the Court that the Government revenue of mauzahs Basantpur, Kaithia, Ghatya, Udaibhanpur, Khairi, Bhairama and Kukurhi, appertaining to Mahal Basantpur, tauzi no. 2156, is as has been mentioned in schedule B to the plaint; that the amount of Government revenue Rs. 73-14-0, Rs. 71-14-0, Rs. 88-14-0, Rs. 46-14-0, Rs. 9-13-0, in respect of khata nos. 4, 5, 6, 7, 8 and 9 respectively are wrong and have been arrived at on account of the fraud and deception practised by the defendants and that these are not binding upon the plaintiffs.

That a decree for Rs. 154-13-10 the amount in claim with future interest may be passed in favour of the plaintiffs as against the defendants jointly or separately."

In their plaint the plaintiffs allege that in the Collectorate partition which took place in 1845 the jama sadr of each mauzah was fixed by the Collector and entered in the documents of the officers. We are not in these appeals concerned with the mauzahs other than mauzahs Kaithia and Khairia. According to the plaintiffs' case by the partition of 1845 Rs. 130-8-0 was fixed as the Government revenue payable in respect of mauzah Kaithia and Rs. 148-9-0 as the Government revenue in respect of Khairia; and they say that Rs. 87-1-3 was fixed as the Government revenue payable in respect of mauzah Gourua. They complain that whereas the jama fixed by the partition of 1845 in respect of Kaithia was Rs. 130-8-4 that fixed by the order of the learned Collector is only Rs. 73-14-0 and that whereas the Government revenue fixed by the partition in respect of mauzah Khairia was Rs. 140-9-7 that fixed by the Collector recently is only Rs. 71-14-0 and they contend that they are prejudiced by the orders of the Collector since they have now to pay Rs. 257-15-1 as Government revenue whereas the Government revenue in respect of their mauzah was fixed at Rs. 87-1-3 by the Collectorate partition of 1845. This is the substance of their case; but having regard to the fact that the Collector has made his orders, and there may be some difficulty as to the jurisdiction of this Court to deal with the orders of the Collector, the plaintiffs allege that the defendants have obtained the opening of separate accounts by bringing

"in their collusion and concert the amlas (in charge) of khatas 4, 5, 6, 7, 8 and 9 regarding the purchased mauzahs, resorted to fraud and caused separate accounts to be opened on after less jama, than what was fixed in respect therefor which are given in schedule C."

In the 10th paragraph they say as follows:

"The plaintiffs have learnt that on the strength of the fraudulent proceedings the defendants deceived the revenue authorities and got

1928.

DOMA BHAGAT v. RAMANAND SINGH.

DAS, J.

insufficient amount of Government revenue fixed than what is proper, regarding the said khatas; that no process or notice ever reached the locality or proclaimed at the places required by law; that they brought in their collusion and concert the court peon and caused him to file a wrong and false report of the service of processes; that no process was ever served nor was anybody informed of the proceedings; that all the proceedings were ex parte and fraudulent and as such they are not binding upon the plaintiffs."

The learned Subordinate Judge has found in favour of the plaintiffs. The defendants other than defendants 5-7 represented before us by Mr. N. C. Sinha and defendants 10-13 represented by Mr. Guru Saran Prosad are satisfied with the judgment of the learned Subordinate Judge, so that we are not concerned with the question affecting them; but defendants 5-7, the purchasers of mauzah Kaithia, and defendants 10-13, the purchasers of mauzah Khairia, are not satisfied with the judgment of the learned Subordinate Judge and they appeal to this Court. As I have said, the appeal of defendants 5-7 is First Appeal 61 of 1926 and the appeal of defendants 10-13 is First Appeal 85 of 1926.

I have no doubt whatever that the suit of the plaintiffs is misconceived and that the learned Subordinate Judge should have dismissed the suit. It is in my opinion an entire mistake to suppose that the jama sadr was fixed on the different mauzahs by the batwara proceedings of 1845. Now the partition of 1845 was no doubt under Regulation 19 of 1840 and section 19 of that Regulation gave power to the Collector to

> "draw out a paper of partition, specifying the mahals of villages included in the several estates into which the property may have been divided, the gross produce of each mahal or village"

and

> "the allotment of the public jama upon each";

but it is obvious that the Collector allotted the public jama upon each of the mauzahs as the section itself says

> "to enable them" i.e., the revenue authorities, "to judge whether the division of the property, and the allotment of the jama on each estate into which it may have been divided have been made agreeably to the Regulations."

The petitioner in the partition proceedings in 1845 was the owner of mauzah Saranpur and he applied to have mauzah Saranpur partitioned from mahal Basantpur which on that date as I have mentioned consisted of eight mauzahs. Now the revenue authorities had to distribute the Government revenue equitably between the two revenue paying units, namely, mauzah Saranpur and the remaining mauzahs constituting mahal Basantpur. In order to enable them to do so they had to enquire into the question as to what should be the allotment of the public jama upon each mauzah. It is absurd in my opinion to contend that there was a decision in those proceedings as to the Government revenue payable by each of the mauzahs constituting mahal Basantpur. That question was not before the revenue authorities and was not decided by them. As I have said they had to distribute the Government revenue equitably between the two revenue-paying units and had therefore to consider what should be the allotment of the public jama upon each mauzah. It is of course easy to fall into an error such as that into which the learned Subordinate Judge has fallen; but if the learned Subordinate Judge had only considered the matter from this point of view that there was no application before the Collector for the partition of the remaining seven mauzahs which constituted mahal Basantpur after Saranpur went out of the mahal, he could have avoided the mistake.

The question does not rest here. As I have said Mr. Milne sold mauzah Kaithia to the defendants 5-7 on the 9th March, 1915; he distinctly stated in that document that the jama sadr payable in respect of mauzah Kaithia was Rs. 73-14-0. He was the owner of mauzah Kaithia and the remaining villages of Basantpur after the sale of two of the mauzahs which had taken place before the 9th March, 1915. It was therefore open to him to decide in what proportion the Government revenue payable in respect of all the mauzahs which belonged to him should be paid. He

1928.

DOMA BHAGAT v. RAMANAND SINGH.

DAS, J.

made a statement to defendants 5-7 that the Government revenue payable in respect of that mauzah was Rs. 73-14-0. Defendants 5-7 on the 7th January, 1918, made an application for opening a separate account. We are informed that they filed three applications and that in the first application they stated that the Government revenue heretofore paid in respect of the mauzah was not Rs. 73-13-0 but Rs. 122-9-0; but they corrected that petition and subsequently by their third petition they stated definitely that Rs. 73-12-0 was the Government revenue payable in respect of the mauzahs. It will be convenient at this stage to consider the procedure which should be adopted by the Collector when an application of this nature is presented to him. Section 70 of the Bengal Land Registration Act gives power to a proprietor holding undivided interest in specific lands to apply for separate account; and it provides that

> " the application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest."

Now the application conformed to all the rules that are to be found in section 70 and to deal with the last of the applications which was filed on behalf of defendants 5-7, it stated definitely that Rs. 73-12-0 was the amount of Government revenue heretofore paid on account of their undivided interest in the mahal. The section then provides that

> " On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act XI of 1859."

The order-sheet of the Collector shows that the procedure indicated in section 70 was in fact adopted by him. Then the section proceeds to say that

> " in the event of no objection being urged by any recorded cosharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it."

Now the question is whether Mr. Milne could possibly have made any objection to it. Having regard to the kebala executed by him in favour of defendants 5-7 it would not have been open to Mr. Milne to make any objection to the application presented on behalf of defendants 5-7; nor was any objection urged on his behalf with the result that the Collector on the 22nd May, 1918, opened a separate account with them.

I should now like to consider what remedy there is to the persons who may be dissatisfied with the order of the Collector. It would appear from section 70 that an objection must be made before the Collector to enable the objector, to raise any question in regard to the separate account. Section 74 provides that where such an objection is raised,

" the Collector shall refer the parties to the Civil Court and shall suspend proceedings until the question at issue is judicially determined."

This section is in accordance with the policy which the legislature has always adopted, namely leaving all questions of title to be determined by the Civil Courts and not by the Revenue Courts; but it is obvious that the Collector cannot refer a question of this nature to the Civil Court unless an objection has been preferred to the application for a separate account under section 70 of the Land Registration Act. There are two other sections which have to be noticed. Section 72 provides that:

" Whenever any share in respect of which a separate account has been opened by the Collector under section 10 or section 11 of the said Act XI of 1859, or under section 70, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers, any proprietor, or manager whose name is borne on the General Register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is opened, may submit to the Collector a written application setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager, or jointly by two or more recorded proprietors or managers, and specifying the manner in which such share has become broken up and distributed among the proprietors

1928.

DOMA BHAGAT v. RAMANAND SINGH.

DAS, J.

of the estate, and praying that the separate account standing open in respect of such share shall be closed, and if he so desire, praying that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open."

Now it is not open to doubt that section 72 gives a right to a proprietor to make an application praying that the separate account be closed only when any share in respect of which a separate account has been opened by the Collector no longer corresponds with the character and extent of interest held in the estate by any one proprietor or manager. Section 72 therefore does not apply to a case where a proprietor being served with notice under section 70 does not appear to contest the application under that section. To the same effect is section 74A which gives the power to the Collector irrespective of any application that may be made to him to close a separate account in respect of any estate when it appears to him that the separate account in respect of that estate no longer represents existing facts. In other words section 74A gives the same power to the Collector which section 72 gives to a party and these sections apply only when the shares in respect of which a separate account has been opened no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager.

This being the position, it is relevant to enquire under what provision of law Bhabani Shankar and after him the plaintiffs applied to the Collector asking him to close the separate account. We are informed that the application was made either under section 72 or section 74A. The reply is that neither section 72 nor section 74A gives any right to the applicants to make an application of this nature. They or their predecessors in title should have objected under section 70 of the Land Registration Act. It is contended however that the omission to do so does not

take away their rights to ask the Civil Court to redress any grievance that they may have in the matter. The following cases were cited before us: *Muddun Mohan Majoomdar* v. *Poorno Chandra Gangooli* (1), *Hur Gobind Das* v. *Buroda Prasad Das* (2) and *Goluck Chunder* v. *Ram Huree* (3). Now in the first two cases the Civil Court found that the proceedings before the Collector were without jurisdiction and that, that being the position, the Civil Court undoubtedly had the right to determine the rights of the parties. In the other case it was held that by his omission to appear before the Collector the plaintiff had not forfeited his right to the share of which he was in possession and that the suit was one in which it would be proper to make a declaratory decree. It appears that the defendant was recorded under section 11 of Act II of 1859 in respect of a larger share than that to which he was entitled. It was not denied that the plaintiff was served with notice to appear before the Collector; but it appears that he did not appear and the question was raised in the Civil Court whether the plaintiff not having raised the objection before the Collector had forfeited his right to the share of which he was in possession, the Calcutta High Court very properly held that he had not forfeited his share. As I have pointed out the legislature has always proceeded on the principle that a question of title is a matter for the Civil Court and not for the revenue court to decide. Now there is no doubt that the Civil Court has right to entertain any suit of a civil nature unless its right to take cognisance of such a suit is barred by any express enactment. There was nothing in Act II of 1859 to bar the right of the Civil Court to entertain a suit of that nature, the suit actually raising a question of title as to a

(1) (1969) 13 W. R. 67. (2) (1871) 15 W. R. 112.

(3) (1874) 23 W. R. 104.

1928.

DOMA BHAGAT v. RAMANAND SINGH.

DAS, J.

definite share. Now what are the facts before us? The Government revenue of Rs. 597-9-1 is jointly payable by the owners of Mahal Basantpur to the Collector. No doubt for the convenience of the parties the Collector has the right to open separate accounts; but that does not affect the position that all the proprietors are in fact liable for the entire Government revenue payable in respect of the Mahal. Now that question of convenience is dealt with in a particular enactment; and it gives certain rights to the parties to ask the Collector to open separate accounts provided the procedure indicated in those Acts is complied with. In my opinion the question as to separate account does not in fact raise any question of title; and, as I understand the position, it is still open to the parties to have the Government revenue partitioned in a proper proceeding before the Collector. What the learned Subordinate Judge has done in this case is to distribute the Government revenue amongst the several co-owners. Now this is a position which it was impossible for the learned Subordinate Judge to take up. The question of distribution of the Government revenue is primarily the duty of the Collector and, so far as I understand the point, it is a matter which the Civil Court cannot deal with. I have no doubt whatever that the present suit was not maintainable and should have been dismissed by the learned Subordinate Judge.

I would allow the appeals, set aside the judgment and the decree passed by the learned Subordinate Judge and dismiss the plaintiffs' suit with costs here and in the Court below payable to defendants 5-7 and defendants 10-13. The cross objection necessarily fails and must be dismissed.

ALLANSON, J.—I agree.

Appeals allowed.