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contains two distinct provisions relating to responsibility for the loss, destruction or deterioration of goods with respect to the description of which an account materially false has been delivered under section 58. First, it is enacted that if the loss, destruction or deterioration is in any way brought about by the false account the railway administration shall not be responsible at all. This covers cases where the nature of dangerous goods has been fraudulently concealed and damage has resulted. Secondly, that in any case the administration shall not be responsible

> " for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account."

On the facts as found the declaration given for the purposes of section 75 in the case before us was false in so far as it represented the value of the consignment to be Rs. 1,800 only; and in so far as that representation was the basis of the calculation of percentage payable by way of compensation for increased risk, this was a material part of the declaration, account and description of the goods. I am of opinion, therefore, that the second part of section 78 applies and that the plaintiff is barred from recovering more than the value of 11 seers six chhataks calculated in accordance with the description and valuation of the consignment contained in the declaration. On this view I agree that the appeal should be dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Dhavle and Agarwala, JJ.

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October, 22, 23. *January*, 8.

GOPALJI JHA

v.

GAJENDRA NARAYAN SINGH.*

Injunction—Estates Partition Act, 1897 (*Beng. Act V of* 1897), *section* 25—*suit for declaration and injunction*

* Appeal from Original Order no. 33 of 1935, from an order of Babu Ram Bilas Singh, Subordinate Judge of Darbhanga, dated the 11th December, 1934.

restraining defendants from proceeding with the Batwara—Pattibandi—Principles on which injunction should be granted.

The plaintiff who owned an eight annas share in Mahal Parhat Keotgawan applied for partition before the Collector and the defendants opposed the application on the ground of a previous partition. The objection was disallowed and the partition proceeded. Ultimately the Board of Revenue directed the parties to remain in possession of the major portion of the estate according to their previous private arrangements and directed the division of the rest only according to shares. The plaintiff thereupon filed the present suit and prayed for various declarations and for a permanent injunction restraining the defendants from taking any action in the Batwara case for allotment of *patti* in accordance with the order of the Board. They also prayed for an *ad interim* injunction on the ground that a pattibandi on the basis of the order in question would cause them irreparable loss and wrongful damage. The Subordinate Judge passed an order restraining the appellants from taking any further steps in the Revenue Court.

Section 25 of the Estates Partition Act provides against the issue of an interim injunction restraining the defendants from proceeding with the Batwara. Even when that section does not apply, Civil Courts ought not to lightly interfere with proceedings before the Revenue authorities by restraining the parties. It is impossible in the exercise of judicial discretion to grant an interim injunction on the ground that the defendant would be no worse off for the injunction.

Appeal by the defendants.

The facts of the case material to this report are set out in the judgment of Dhavle, J.

R. K. Jha and *R. Choudhury*, for the appellants.

S. M. Mullick (with him *B. P. Sinha* and *N. K. Pd. II*), for the respondents.

DHAVLE, J.—This is an appeal against an interim injunction restraining defendants 1st party from proceeding with the Collectorate batwara of mahal Parhat Keotgawan, tauzi no. 10066 in the district of

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Darbhanga. Plaintiffs' share in the estate is eight annas, defendants 1st party owning four annas and defendants 2nd party the remaining 4 annas. In October, 1922, the plaintiffs applied to the Collector of Darbhanga for a partition of the estate. The application was opposed by defendants 1st party on the ground of a previous partition, but the objection was disallowed and a proceeding under section 29 of the Bengal Estates Partition Act, 1897, recorded in July, 1923. There were prolonged disputes at the raibandi stage, and when the matter came up before Mr. Heycock, Member of the Board of Revenue, in November, 1929, there was a compromise, which, however, led to further disputes at the next stage, so much so that in the pattibandi appeal Mr. Dain, then Member of the Board of Revenue, passed an order that the parties were to remain in possession of 5 out of the 7 mauzas that constituted the estate exactly as they had been doing under certain private arrangements since 1889 and that the other 2 mauzas, which only represent a little over 1 per cent. of the estate, were to be divided among the parties according to their shares. This was in December, 1933, and after unsuccessfully endeavouring to obtain a review of the order of the Board, the plaintiffs sued in September, 1934, for various declarations and for a permanent injunction restraining the defendants from taking any step in the batwara case for allotment of pattis in accordance with the order of the Board of Revenue. They also applied for an interim injunction on the ground that a pattibandi on the basis of the order in question would cause them great and irreparable loss and wrongful damage. The learned Subordinate Judge allowed the injunction. Defendants 1st party have accordingly preferred this appeal and also an application in revision in case it is found that no appeal lies. As it has not, however, been contended before us on behalf of the plaintiffs that no appeal lies, it is unnecessary to refer further to the revisional application.

There was and is no dispute about the shares of the parties. The disputed raibandi, as Mr. Dain calls it in paragraph 4 of his order, comes to a little over Rs. 30,000, if Itahar, the largest mauza of the estate, around which these disputes have centred, be valued at Rs. 9,700, as was originally done by the partition Deputy Collector. This valuation of Itahar was reduced by the Collector on appeal; on a further appeal there was a remand by the Commissioner, and another partition Deputy Collector reduced the valuation to Rs. 5,056, which was raised by another Collector to Rs. 8,053 but again reduced by another Commissioner to Rs. 7,814 before the matter went up to Mr. Heycock in 1929 and was compromised. In the view that Mr. Dain took, it became unnecessary for the final revenue authority to fix the valuation of the mauza, but I have referred to the matter because the plaint endeavours to make out a case of loss to the plaintiffs on the ground that the order of the Board would give them assets amounting to Rs. 14,407 out of a total valuation of over Rs. 30,000. Reduce the valuation of Itahar to the figure (Rs. 7,814) adopted by the highest revenue authority that has yet looked into the matter, and the valuation of the entire estate amounts to less than double the assets that would come to the plaintiffs (and Itahar is not among them) under the order of the Board for their 8 annas share in the estate.

It has been contended on behalf of the appellants that no suit lies for setting aside the pattibandi order of the Board of Revenue. Prima facie that would appear to be so, but it has been urged on behalf of the plaintiffs that the order of the Board affects the extent of their interest in the estate and that, therefore, the Civil Court has jurisdiction to entertain the matter. The question arises in this way. There were private arrangements made in 1889 by all the proprietors among themselves, and in accordance with them the plaintiffs' predecessors came into exclusive possession of three whole mauzas besides 100 bighas

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in a fourth mauza, the balance of which was similarly given to the predecessors of defendants 2nd party, while mauza Itahar, which was purchased by defendants 1st party in 1911, was given exclusively to their predecessors in title. The Board has found that defendants 1st party have

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"improved their property, both by drainage and irrigation, and also by the discreditable method of driving raiyats off the land."

The arrangements of 1889 were not embodied in any registered documents; they were to remain in force for 15 years but had not been put an end to when the plaintiffs applied for the batwara after the expiry of another 18 years or so. It is private partitions of this incomplete kind that lead to divergences between assets actually held and the shares recorded in the Collector's Land Registration Department; and various methods of dealing with these divergences have commended themselves to various members of the Board of Revenue, as was shown in detail by Mr. Hubback in the Chamanpur case of 1932 (*see* Mr. Janak Kishor's Selected Decisions of the Board of Revenue, Volume IV, page 224). Mr. Dain, while recognising that the meaning of the law is not completely beyond doubt, adopted Mr. Hubback's view that in a case like the present, where the proprietors were, as he held, in several possession of specific mauzas corresponding to their shares and also had undivided shares in the rest of the estate, the portion of the parent estate in the several possession of each proprietor should first be allotted to him, and then his share on division of the joint portion, without any allowance for any increase or decrease in the assets of the several portion since it was assigned to him for separate enjoyment. The appellants have brought it to our notice that this view of section 5(*4*) of the Estates Partition Act was taken in *Kalanand Singh* v. *Kamalanand Singh*(1). Mr. Mullick, who appears for the plaintiffs, has contended that the

(1) (1912) 14 Ind. Cas. 225.

present is a case not within sub-section 4 but within sub-section 1 of section 5 of the Act, and that the Board had no jurisdiction to treat the private arrangement among the proprietors as a permanent arrangement making over possession of the proprietary interest, which latter alone will justify the application of section 77 of the Act, compendiously summarised in the margin as " Lands of which each proprietor is in possession to be allotted to him ". In support of the contention that the Board's order, so far as it is based on section 77 of the Act, may be challenged by a suit for a declaration that it is ultra vires, Mr. Mullick has cited *Jitendra Gopal Roy* v. *Matangini*(1), a case in which it was held, notwithstanding section 119 of the Act, that an order made by a Deputy Collector under section 83 of the Act was without jurisdiction. But the view taken in this Court in *Radhakanto Parhi* v. *Mathura Mohan Parhi*(2) and several subsequent decisions is that if the Revenue Court has assumed jurisdiction correctly, that is to say, that if by reason of its local situation and 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 not every error in the exercise of that jurisdiction will invalidate the proceeding and render it null and void, or entitle the Civil Court to correct it. In *Radhakanto Parhi's* case(2),Mullick, J. (with whom Ross, J. agreed), therefore, held that the mere fact that a Deputy Collector had, in effecting a partition, wrongly proceeded under clause 5 instead of under clause 3 of section 5 of the Estates Partition Act would not entitle the Civil Court to entertain a suit for a declaration that the proceedings of the Deputy Collector were without jurisdiction, and that such a suit would be clearly barred by section 119 of the Act. It was urged in that case, as has been urged

(1) (1918) 49 Ind. Cas. 965.

(2) (1922) I. L. R. 2 Pat. 403.

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in this case also, that a question of title or interest in the parent estate was involved and that therefore the suit did lie; the contention was rejected. The learned Subordinate Judge has taken the view that the plaintiffs' title, which admittedly extends to eight annas of the estate, would be affected if their share was confined to specific mauzas: 16 annas in three villages (besides some other very small properties) would, according to him, not be the same thing as eight annas in all the seven villages. But he has failed to notice that if this were the correct view of the matter, every pattibandi order made by the batwara authorities could support a suit in the Civil Court, notwithstanding the definite bar imposed by section 119 of the Act. We are, of course, not called upon at the present moment to decide whether the suit is or is not incompetent, but we have still to consider the probability or otherwise of the plaintiffs being entitled to any relief in the suit. Most of the declarations prayed for in the plaint seem to be untenable, such as, that the partition proceedings are not equitable or valid, that defendants are not entitled to Itahar and one-quarter of the two undivided mauzas, that the Board's order is wrong, and that the batwara proceedings should be so carried on that the assets will be proportional to the shares, to say nothing of the concluding claim that if it be impossible to make this last declaration, a decree be passed to the effect that an additional share be allotted to the plaintiffs in Itahar after the partition proceedings. It may, however, be possible, as suggested by Mr. Mullick, to recast the suit; and in view of the divergences of opinion as regards the practical working of sub-section 4 of section 5, it is impossible on present materials to say that there may not be a serious question to be tried at the hearing of the suit.

That, however, is not sufficient to justify the issue of an interim injunction. Section 25 of the Act provides that no suit instituted in a Civil Court after the lapse of four months after the Collector has drawn

up a proceeding under section 29, by any person claiming any right or title in or to a parent estate, shall avail to affect or stay the progress of any proceedings which may have been taken under the Act for the partition of the estate. The lower Court holds that this section has no application to the case because the question raised by the plaintiffs relates to the extent of their interest and title. This reasoning is far from clear; the learned Subordinate Judge apparently took it that the defendants' contention was that the section barred the suit altogether. That contention, if it was really advanced, was rightly overruled, but the lower Court apparently overlooked the arguments provided by the section against the issue of an interim injunction restraining the defendants from proceeding with the batwara. The essence of the present suit is relief on the footing that the plaintiffs have an eight-annas share in the estate (which is undisputed) and that the pattibandi directed by the Board of Revenue will give them less than this share. Mr. Mullick has argued that the suits contemplated in section 25 are suits brought by those persons only whose claim of some right or title in or to a parent estate has not been accepted by the Collector under section 23 of the Act. This, even if accepted as correct, does not help to show that the Civil Court acts properly in lightly interfering with the progress of the proceedings before the Revenue authorities by restraining the parties. Assuming, moreover, that section 25 has no application to the present suit, it is difficult, if a suit of the kind contemplated in the section will not, when instituted more than four months after the proceeding under section 29, avail to stay the progress of the batwara proceedings, to see why a suit brought by a party who considers himself aggrieved by a pattibandi order referable to section 77 of the Act should be enabled to hold up the batwara proceedings. The ground on which the plaintiffs ask for an interim stay—namely, that they would otherwise suffer great and irreparable

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loss and wrongful damage—is plainly not made out by referring (as the learned Subordinate Judge has done) to the fresh allotment that may have to be made, and the question of pattibandi that may have to be re-opened, in the event of plaintiffs' success; for, that would happen in every such suit and the loss apprehended, far from being irreparable, could be easily compensated by saddling the other side with the extra cost. The learned Subordinate Judge was apparently impressed by the circumstance that the appellants would be no worse off for the injunction, but it is impossible in the exercise of judicial discretion to grant an interim injunction merely on that ground, and the lower Court has erred in failing to notice that the valuation of Itahar for revenue purposes is really a matter for the revenue authorities and that on the figure adopted by Mr. Middleton (when the matter came up before the Commissioner for the second time) which has not yet been set aside by any higher revenue authority, the plaintiffs cannot make out even a prima facie case of loss, while even on the higher figure originally taken by the Deputy Collector the revenue authorities do not apparently consider that the revenue would be endangered. Whether section 77, which has apparently been applied by the Board, does or does not apply to the case will require much more consideration than it has received from the lower Court. The Board of Revenue itself expressly recognized that " the meaning of the law is not completely beyond doubt ", and the learned Subordinate Judge ought, before holding on a bare reading of section 77 that it had no application, to have considered inter alia the effect of the private arrangements that have continued for years after the expiry of the alleged leases along with the plaintiffs' failure before the Partition Officer to make any attempt to prove the realization from the other parties of the amount of Rs. 300 a year that might negative the claim of the other parties that notwithstanding the wording of the leases (which were unregistered) the parties simply took the proprietary interest in

specific mauzas. The learned Subordinate Judge was aware that the Civil Court has no power to issue injunctions to the Batwara Court, and yet he has not hestitated in effect to stay the proceedings in that Court by restraining the appellants from taking any further steps there. On the facts of the present case so far as they are before us, this seems an entirely unwarranted, though indirect, interference with the working of the Revenue Court. It was pointed out in *Rajkeshwar Singh* v. *Shyam Bihari Singh*(1) that "the Civil Court should be very slow to interfere with the jurisdiction which is exercised by a Revenue Court upon powers conferred by the Estates Partition Act." When such interference is invoked, the facts must be scrutinized with particular care. If this had been done, the learned Subordinate Judge could scarcely have failed to notice that the alleged defect of assets may have no real existence and that what the plaintiffs are assailing may be no more than a mode of division—the ground on which he distinguished the ruling in *Radhakanto Parhi's* case(2). This is all the more surprising because he must have known that it fell to the Revenue Officers, during the batwara, to consider and decide for themselves whether or not section 77 applied to the case, and that in such matters the jurisdiction of the Civil Court is limited. The Board of Revenue felt constrained to observe that the waste of money and time spent by the parties (with the usual tactics) over the partition case was a grave public scandal, and this by itself should have sufficed to impress on the lower Court the necessity of great care and caution in scrutinizing the facts before allowing an injunction. The case was quite unlike *Amar Kumar* v. *Coventry*(3) in which this Court acted against the defendants *in personam* because unless an injunction were granted, it was doubtful whether the plaintiffs, if successful, would have any remedy at all.

(1) (1927) 8 Pat. L. T. 477.
(2) (1922) I. L. R. 2 Pat. 403.
(3) (1924) 85 Ind. Cas. 551.

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I would set aside the order of the lower Court with costs. Hearing fee, five gold mohurs.

AGARWALA, J.—I agree.

Appeal allowed.

APPELLATE CIVIL.

1936.

January, 10.

Before Macpherson and Fazl Ali, JJ.

MUSAMMAT JAMUNI

v.

BHOLARAM.*

Chota Nagpur Tenancy Act, 1908 (Act VI of 1908), sections 46 and 47—sale of a part of occupancy holding in execution of a mortgage decree, validity of—Code of Civil Procedure, 1908 (Act V of 1908), section 47 and Order XXI, rule 58—purchaser of entire holding in execution of a certificate under the Public Demands Recovery Act, if a representative of the judgment-debtor.

Where the mortgagee of a piece of homestead land which formed part of an occupancy holding proceeded to sell it in execution of his mortgage decree and a purchaser of the entire holding in execution of a certificate under the Public Demands Recovery Act objected to the sale on the ground that section 47 of the Chota Nagpur Tenancy Act was a bar to the sale.

Held, that the purchaser in execution of a certificate under the Public Demands Recovery Act of the entire holding was not a representative of the judgment-debtor under the mortgage decree and could not interfere in the execution proceedings. But it was the duty of the court to decide whether the property sought to be sold could be sold or not. Once it was found that the land sought to be sold is a part of a *raiyati* holding the sale cannot take place in the face of the clear provisions of section 47 of the Act. Although under section 46 the tenant could mortgage the holding or a portion

* Appeal from Appellate Order no. 173 of 1935, from an order of J. A. Saunders, Esq., I.C.S., Judicial Commissioner of Chota Nagpur, dated the 14th March, 1935, reversing an order of Babu Charu Chandra Coari, Munsif, Giridih, dated the 23rd November, 1934.