

APPELLATE CIVIL.

Before Sir Shaji Lal, Chief Justice, and Mr. Justice Harrison.

RAMJI LAL AND OTHERS (DEFENDANTS) —

Appellants,

versus

MANGAL SINGH AND ANOTHER (PLAINTIFFS) —

Respondents.

Civil Appeal No. 718 of 1921.

Jurisdiction (Civil or Revenue)—Civil suit for recovery of price of barley delivered to defendants by a Revenue Officer—whether competent—Punjab Land Revenue Act, XVII of 1887, sections 144, 158 (2) (XIX)—onus probandi.

Defendants applied to the Revenue Officer for division and appraisal of the produce of a holding in which they were co-sharers with the plaintiffs. An appraisal was duly made, but before the produce could be divided the plaintiffs removed it and stored it in a house. Thereupon the referee appointed by the Revenue Officer made over a whole *Khatti* of barley to the defendants in lieu of their share of the produce. The plaintiffs, after making an unsuccessful attempt to get redress through the Revenue Authorities, brought the present action for the price of the barley alleging that it belonged to them exclusively.

Held, that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer, who is required only to divide the produce which is admittedly joint, or to determine its value; and that consequently the Civil Court has jurisdiction to entertain the present suit which does not come within the purview of section 158 (2) (XIX) of the Punjab Land Revenue Act.

Held also, that the *onus* was on the defendants to satisfy the Court that the claim made by the plaintiffs is not within the cognizance of a Civil Court and that they had failed to discharge that *onus*.

Miscellaneous appeal from the order of Rai Bahadur Lala Sri Ram, Poplai, District Judge, Gurgaon and

Hissar Districts, dated the 15th December 1921, reversing the decree of Lala Devi Dayal, Dhawan, Senior Subordinate Judge, Gurgaon, dated the 12th July 1920 dismissing the claim.

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G. C. NARANG, for Appellants,
B. P. KHOSLA, for Respondents.

The judgment of the Court was delivered by—

SIR SHADI LAL, C. J.—The facts of the case, which are relevant to the question of jurisdiction arising in this appeal, are briefly as follows :—

On the 8th April 1918, the defendants made an application to the Revenue Officer for a division or appraisal of the produce of a holding in which they were co-sharers with the plaintiffs. The Revenue Officer appointed a referee to divide and appraise the produce. It appears that on the 30th April an appraisal of the produce was duly made; and that before the produce could be divided the plaintiffs removed it and stored it in a house. Thereupon the referee made over a whole *Khatti* of barley to the defendants in lieu of their share of the produce.

The plaintiffs after making an unsuccessful attempt to get redress through the Revenue Authorities have brought the present action for the recovery of the price of the barley, alleging that it belonged to them exclusively and that the referee had no right to deliver it to the defendants. The question for consideration is whether the suit is or is not cognizable by a Civil Court. Now, section 158, sub-section (2), of the Punjab Land Revenue Act enumerates the various matters which are not cognizable by a Civil Court, and one of the matters mentioned therein is—

“Any claim to set aside or disturb a division or appraisal of produce confirmed or varied by a Revenue Officer under this Act.”

Now, it is clear that the dispute between the parties relates to the ownership of the barley delivered by the referee to the defendants, and we consider that the question whether the barley is joint property or belongs exclusively to the plaintiffs is a question of title which cannot be determined by a Revenue Officer who is required only to divide the produce

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which is admittedly joint or to determine its value. The learned counsel on both sides express their inability to cite any judgment which has a direct bearing upon the question before us, but in view of the wording of section 144 of the Land Revenue Act, which empowers a Revenue Officer to divide or appraise the produce in which two or more persons are jointly interested, and of clause (xix) of section 158, which excludes from the jurisdiction of the Civil Courts any claim to set aside or disturb a division or appraisal of the produce made by a Revenue Officer under the Act, we are of opinion that the question of title to the produce is not one which a Revenue Officer is empowered to determine.

The *onus* is on the defendants to satisfy the Court that the claim made by the plaintiffs is not within the cognizance of a Civil Court, and having regard to the provisions of the law indicated above we hold that they have failed to discharge that *onus*. We consider that it was never contemplated by the Legislature that complicated questions of title should be determined by a referee or a Revenue Officer, and that the function assigned to him under the Act is one of a simple nature, namely to determine the value of the produce which is admittedly joint or to divide it between the shareholders in accordance with their respective shares. The present claim is certainly not one of that character. Neither the language of the Statute nor the general principles of law lend any support to the contention that the Revenue Officer, and not the Civil Court, should determine whether the produce belongs exclusively to one party or whether it is the joint property of both the parties.

We accordingly concur in the conclusion reached by the learned District Judge and dismiss the appeal with costs.

Appeal dismissed.
