

distinction between a joint tenancy and a tenancy-in-common, the test being whether definite shares had been specified, and that it was only in the case of a joint tenancy that the principle of survivorship applied. This view appears to me to be correct. There can, in my opinion, be no doubt that when *Mussamat Parchono* sold her occupancy holding to Biba and Nihal Chand, Biba purchasing 1/3rd and Nihal Chand 2/3rds of the entire estate, the tenancy became a tenancy-in-common and that the principle of survivorship did not apply. The view taken by the Courts below is therefore correct and I would dismiss this appeal with costs.

FFORDE J.—I agree.

C. H. O.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Broadway and Mr. Justice Fforde.*

DEO KARAN DAS (OBJECTOR) Appellant

*versus*

THE SECRETARY OF STATE, Respondent.

Civil Appeal No. 2327 of 1922.

*Land Acquisition Act, I of 1894, sections 30, 54—Three persons claiming to be interested in the property—Dispute as to apportionment referred to District Judge who refused to decide the question as a civil suit was pending between two of the claimants—Whether an appeal is competent from the order of the District Judge and whether that order is legal.*

Three persons claimed to have an interest in the land and factory in dispute. One person accepted the award made by the Collector, but the other two objected to it. The Land Acquisition Officer referred the matter to the District Judge including the question as to the apportionment of the amount awarded. The District Judge affirmed the award as to the amount of compensation, but declined to adjudicate on the question of apportionment on the ground that a civil

1926

JAI KARAN  
v.  
NATHU RAM.  
BROADWAY J.

FFORDE J.

1926

March 2.

1926  
 DEO KARAN DAS  
 v.  
 SECRETARY OF  
 STATE.

suit was pending regarding the ownership of the factory. Appeals were preferred separately by the two objectors to the High Court.

*Held*, that both appeals were incompetent as being premature, as section 54 of the Land Acquisition Act contemplates an appeal from a final award or part of a final award, and that until the District Judge had decided the question as to apportionment there was no final award which could be appealed against.

*Ardešhīr Mancherjī v. Assistant Collector, Poona* (1), followed.

*Held also*, that the District Judge was wrong in holding that the existence of the civil suit in which the ownership of the factory was in question affected his jurisdiction to decide the question of apportionment referred to him, particularly as the suit was only between the two objectors and had no concern with the third claimant.

*First appeal from the order of Lt.-Col. B. O. Roe, District Judge, Lahore, dated the 29th May 1922, upholding the award, but declining to decide the question of apportionment.*

GOPAL CHAND and BISHEN NATH, for Appellant.  
 Government Advocate, for Respondent.

#### JUDGMENT.

BROADWAY J.

BROADWAY J.—By notification No. 18061, dated the 19th October 1918, a certain area of land was acquired by Government for the extension of Lahore Cantonment, East Station Yard. A portion of the land so acquired consisted of a plot 0.90 acre=8 *kanals* 14 *marlas* in area, situated in *Mauza Ganj*, on which stood a saltpetre factory. Three persons claimed to be interested in this land and factory, namely, *Lala Kanshi Parshad*, his brother *Lala Deo Karan Das* and one *Harnam Singh*, who demanded a sum of Rs. 32,000 as compensation for the factory. There was also a dispute between the said three

persons as to the ownership of the factory. *Lala Kanshi Parshad* claimed to be the sole owner and as such entitled to the entire amount awarded; his brother claimed to be a co-sharer to the extent of one-half, while *Harnam Singh* claimed that he was entitled to a 1/3rd share. On the 13th May 1920, the Collector under Act I of 1894 made an award relating to this area, by which a total sum of Rs. 4,616-9-3 was fixed as the amount of the compensation. *Harnam Singh* accepted the award which was, however, objected to by the other two. The Land Acquisition Officer thereupon referred the matter to the District Court. Acting under the provisions of section 30 of Act I of 1894, he also referred the question as to the apportionment of the amount awarded. All the references were dealt with together by the learned District Judge who affirmed the award so far as it related to the amount of compensation, but declined to adjudicate on the question of the apportionment. The reason given for this is that a civil suit was pending, at the time of the acquisition, relating to the ownership of this factory.

*Lala Kanshi Parshad* and *Lala Deo Karan Das* preferred separate appeals against the amount of compensation awarded by the learned District Judge. *Harnam Singh* was not made a party to either of these appeals.

At the hearing Mr. M. S. Bhagat for *Lala Kanshi Parshad* asked to be allowed to make *Harnam Singh* and *Deo Karan Das* respondents in his appeal (No. 2933 of 1922), and further prayed that the question of apportionment should be gone into.

Mr. Gopal Chand for *Lala Deo Karan Das* stated that his client did not wish to make *Harnam Singh* a party in his appeal (No. 2327 of 1922).

1926

DEO KARAN DAS

v.

SECRETARY OF  
STATE.

BROADWAY J.

1926

DEO KARAN DAS  
 v.  
 SECRETARY OF  
 STATE.  
 BROADWAY J.

The learned Government Advocate raised a preliminary objection to the effect that both appeals were incompetent, as being premature. It was urged that section 54 of Act I of 1894 only contemplated an appeal from a final award, or part of a final award, of the Court, and that until the learned District Judge had decided the question as to apportionment there was no final award which could be appealed against. There seems to be no doubt that the learned District Judge was wrong in holding that the existence of a civil suit, in which the ownership of the factory was in question, affected his jurisdiction to decide the question referred to him. As I read the provisions of the Act it was incumbent on him to decide the question. In the present case, however, his refusal of jurisdiction is obviously erroneous for the reason that the civil suit referred to was between Kanshi Parshad and Deo Karan Das alone and had no concern with Harnam Singh.

In the circumstances, I am of opinion that the learned Government Advocate's objection is well founded and that both appeals are incompetent, *Ardeshir Mancherji v. Assistant Collector, Poona* (1) I would therefore dismiss both appeals with costs, but in order to avoid further trouble and delay I would direct the learned District Judge to dispose of the reference regarding the apportionment of the compensation as speedily as possible.

In view of the above in Kanshi Parshad's appeal I would not allow the additional grounds of appeal or the addition of parties.

FFORDE J.

FFORDE J.—I agree.

A. N. C.

*Appeals dismissed.*