

present case. I would, therefore, accept this appeal and dismiss the plaintiffs' suit with costs throughout.

TAPP J.

[TAPP J.—I concur.

Appeal accepted.

N. F. E.

APPELLATE CIVIL.

Before Bhide and Tapp JJ.

TIRATH RAM AND OTHERS (PLAINTIFFS) Appellants:

versus

MST. NIHAL DEVI (DEFENDANT) Respondent.

Civil Appeal No. 51 of 1927.

Jurisdiction—Civil or Revenue—Punjab Land Revenue Act, XVII of 1887, sections 117, 158—Widow's application for partition—objected to by collateral—on ground that widow only entitled to maintenance—Order of Revenue Officer to file a suit before him—not complied with—partition carried out—Suit by objector, in Civil Court for declaration—whether competent.

On the death of one Kirpa Ram his one-fifth share in ancestral land was mutated in favour of his widow, the defendant-respondent. She filed an application for partition before the Revenue authorities which was resisted by her husband's brothers and his nephew, the plaintiffs-appellants. They were directed by the Revenue Officer to file a suit in his Court and on their failing to do so the partition was carried out. The plaintiffs brought the present suit for a declaration that the widow of K. R., being entitled only to maintenance, could not claim partition. The lower Appellate Court dismissed the suit on the ground that plaintiffs having failed to bring a suit in the Court of the Revenue Officer as directed by him, the present suit in a Civil Court was not competent.

Held, that under section 117 of the Punjab Land Revenue Act, two courses were open to the Revenue Officer, *viz.* (1) to defer further action till the question

1931

Feb. 24.

of title was determined by the Civil Court, and (2) to determine the question himself as though he were such a Court. His action in not adopting either of these courses and proceeding with the partition without any decision of the question of title was therefore opposed to law.

Held also, that the jurisdiction of the Civil Court to entertain the present suit was in the circumstances not barred by section 158 of the Act.

Bachan Singh v. Madhan Singh (1), followed.

Ghulam Muhammad v. Muhammad Mansur Jan (2), distinguished.

Second appeal from the decree of Rai Bahadur Lala Rangi Lal, District Judge, Gujranwala, dated the 23rd October 1926, affirming that of Lala Nand Lal, Subordinate Judge, 3rd Class, Hafizabad, dated the 21st April 1926, dismissing the plaintiffs' suit.

HAZARA SINGH UPAL, for Appellants.

RAM LAL ANAND, for Respondent.

TAPP J.—The material facts relating to this second appeal are shortly as follows:—

TAPP J.

On the death of one Kirpa Ram his 1/5th share in the ancestral land was mutated in favour of his widow *Mussammât Nihal Devi*, the defendant-respondent. She filed an application for partition before the Revenue authorities which was resisted by three of her late husband's brothers and his nephew, the plaintiffs-appellants, on the question of title. They were directed by the Revenue Officer to file a suit in his Court and on their failing to do this the partition was carried out. They then brought the present suit for a declaration that *Mussammât Nihal Devi* being only entitled to maintenance could not claim partition. The suit was dismissed on the merits and the learned

1931

TIRATH RAM

v.

MST. NIHAL
DEVI.

TAPP J.

District Judge relying on *Ghulam Muhammad v. Muhammad Mansur Jan* (1) dismissed the appeal on the ground that plaintiffs having failed to bring a suit in the Court of the Revenue Officer as directed by him the present suit in a Civil Court was not competent.

Now the facts in the case cited are clearly distinguishable from those in the present case, the chief point of difference being that in the former the partition proceedings were still pending when a suit was brought in a Civil Court. The Civil Court declined to entertain the suit on the ground that a suit involving the same question was already pending in the Court of the Revenue Officer. The suit was thereupon consigned to the Record Room under section 12 of the old Code of Civil Procedure (section 10 of the present Code). An appeal against this order was dismissed and the petition for revision which was dealt with in the ruling cited was also rejected. The *ratio decidendi* in that case was the correct application of section 12 (now section 10) of the Code of Civil Procedure to the facts. The decision is no authority for the proposition that in no circumstances can a Civil Court entertain a suit concerning a question of title arising out of partition proceedings.

According to section 117 of the Land Revenue Act two courses are open to a Revenue Officer when a question of title arises in a partition proceeding pending before him.

(1) Defer further action as to partition till the question of title is determined by a competent Civil Court to which the person or persons raising the question of title should be referred; or

(2) Determine the question himself as though he were such a Court.

In the latter case the procedure to be followed is regulated by sub-section (2) of the section.

Now in the present case the Revenue Officer, beyond directing the plaintiffs to file a duly stamped plaint before him in order that he might decide the question of title, never actually did so, for on plaintiffs' failing to file a plaint as directed, the Revenue Officer ordered a partition to be made and this was duly effected. This was a clear disregard of the provisions of section 117 and the instructions contained in para. 8 of Standing Order No. 27 which sufficiently repel the argument of Mr. Ram Lal as to the inability of the Revenue Officer to decide the question of title in the absence of a duly stamped plaint.

As observed in *Bachan Singh v. Madhan Singh* (1) the action of the Revenue Officer in proceeding with the partition without any decision of the question of title was opposed to law. In my opinion the jurisdiction of the Civil Court to entertain the present suit in the circumstances was not barred under section 158 of the Land Revenue Act.

I would accordingly accept the appeal and setting aside the decree of the lower Appellate Court remand the case for redecision on the merits and in accordance with law. Costs to abide the result.

Court-fees on appeal to be refunded.

BHIDE J.—I agree.

A. N. C.

BHIDE J.

Appeal accepted.

Case remanded.

1931

TIRATH RAM

v.

MST. NITAI

DEVI.

TAPP J.