

APPELLATE CIVIL.

Before Tek Chand and Ahga Haidar JJ.

DREHAN KHAN (PLAINTIFF) Appellant

versus

BAHADUR KHAN AND OTHERS (DEFENDANTS)

Respondents.

Civil Appeal No. 1243 of 1930.

Frontier Crimes Regulation, III of 1901, Sections 8 (3) (d) and 10 : Case referred to Jirga on certain issues—Interlocutory decision of Jirga on some issues only, which did not settle the question of title regarding the property in dispute—Deputy Commissioner's order based on the decided issues—whether a decree—Jurisdiction of Civil Court—whether barred.

The plaintiff instituted a suit for a declaration that he was the exclusive owner of certain houses in Multan City. The defendants raised the preliminary objections that the suit was not maintainable under Section 10 of the Frontier Crimes Regulation, III of 1901. This objection was upheld by the trial Court and the suit dismissed. It appeared that some time before the institution of the suit the defendants had applied to the Deputy Commissioner that the disputes between them and the plaintiff were likely to cause a blood-feud and result in breach of the peace and should be referred to the 'Chief's Jirga' under Section 8 of the Regulation and the Deputy Commissioner had recorded an order that it was a fit case to be so referred and required the Jirga to come to a decision on 9 issues framed by him. The Jirga came to a decision on 6 of the issues but not on the 3 remaining issues as "they could not be disposed of without further enquiry." The Deputy Commissioner thereupon passed a so-called decree "in accordance with the terms of the decisions given in respect to each of the issues that had been settled" and added that orders with respect to the other issues would be passed as soon as they were considered by the Jirga. The Jirga apparently never met again to decide the

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remaining issues nor did it submit another report to the Deputy Commissioner, and thus no finding was given by it on the issue which would have decided the point at issue in the plaintiff's suit in regard to the houses at Multan.

Held, that the order of the Deputy Commissioner did not amount to a decree but was in fact an interlocutory order passed by him accepting the findings of the *Jirga* as to the mode of partition and certain other matters but not a final adjudication of the dispute between the parties, which was not possible without determining what properties were comprised in the family estate and were liable to partition.

And, as the Deputy Commissioner had not passed a decree in accordance with clause (d) of section 8 (3) of the Regulation (the only clause applicable to the present case) the conditions which make Section 10 applicable did not exist and the Civil Court was therefore not debarred from entertaining the suit.

Sham Das-Bhim Sain v. Kalu Ram-Bashesar Nath (1), distinguished.

First Appeal from the decree of Mir Ghulam Yazdani, Senior Subordinate Judge, Multan, dated the 16th May, 1930, dismissing the suit, on holding that the jurisdiction of the Civil Court to entertain and decide the case was barred.

M. L. PURI and M. C. SUD, for Appellant.

NANAK CHAND and S. R. SAWHNEY, for Respondents.

TEK CHAND J.—The parties to this litigation are the sons of the late *Sardar Miran Khan, Darishak Biloch* of Asni, district Dera Ghazi Khan. The plaintiff, *Sardar Bahadur Drehan Khan*, is the son of the deceased by his first wife and is the present

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Tumandar, while the defendants are his sons by another wife. On the 22nd November, 1929, the plaintiff instituted a suit against the defendants claiming a declaration to the effect that he was the exclusive owner of three houses in Multan City and that the defendants had no connection whatever with them. The defendants raised a preliminary objection that the suit was not maintainable under Section 10 of the Frontier Crimes Regulation (III of 1901) by reason of certain orders passed by the Deputy Commissioner, Dera Ghazi Khan, under Section 8 of the aforesaid Regulation. This objection was upheld by the learned Senior Subordinate Judge and the suit dismissed. The plaintiff appeals.

The admitted facts are that on the 2nd March, 1928, the present defendants presented an application to the Deputy Commissioner, Dera Ghazi Khan, alleging that disputes existed between them and the plaintiff in respect of the ownership and partition of certain properties, that these disputes were likely to cause a blood-feud and result in a breach of the peace, and that they be referred to the "Chief's *Jirga*" of the district in accordance with the provisions of Section 8 of the Regulation. On the 2nd April, 1928, the Deputy Commissioner recorded an order declaring that it was a fit case in which the disputes should be settled in the manner provided by Section 8. He accordingly referred the case to the "Chief's *Jirga*," requiring it to come to a finding on the following issues after making proper enquiry and hearing the parties:—

(1) What immoveable property is comprised in the joint family property?

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(2) What are the shares of the parties in the immoveable property of the joint family?

(3) Is *Sardar* Drehan Khan according to custom entitled to a greater share than other brothers on account of his being the *Tumandar*? If so, what is the extent of that additional share?

(4) In what proportion are the parties entitled to inherit the share left by *Sardar* Miran Khan?

(5) What moveable property is comprised in the joint family property and what are the shares of the parties in it?

(6) For how long has *Sardar* Drehan Khan not been paying the income of their shares to his brothers and what is the value of this income? What arrangements should be made for its payment?

(7) What should be the mode of partition both in case of immoveable and moveable properties?

(8) What arrangement should be made for the distribution of the income of joint family property pending the decision of the present suit?

(9) What arrangement should be made for the payment of the maintenance charges for the widows and daughter of the late *Sardar* Miran Khan?

The *Jirga* met and made an enquiry into some of the points in dispute and submitted an *interim* report to the Deputy Commissioner on the 13th April, 1928 (Exhibit D. 1, printed at pages 17-23 of the Supplementary Paper Book). In this report it was specifically stated that issues (2), (3), (4), (7), (8) and (9) were being finally disposed of by the *Jirga*, but "issues (1), (5) and (6) were such about which further inquiry appears necessary to get at the truth." On issue No. (2) the *Jirga* found that the present plaintiff, being the head of the family, was entitled to double

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the share of each of the other sons of the deceased; and on issue No. 7 it recorded a finding as to the *mode* of partition laying down that "as regards the residential houses the *Jirga* proposes that the particular houses in the possession of any party should be got assessed by arbitrators, accepted by the parties, and excess and deficiency of the value be adjusted by payment of money in cash by one party to the other according to the shares." In the end of the report it was again emphasised that "issues (1), (5) and (6) are such as cannot be disposed of without further enquiry."

This report was laid before the Deputy Commissioner, who passed an order on the 7th May, 1928 (Exhibit D. 2). In this order he summarised the findings of the *Jirga* on issues (2), (3), (4), (7), (8) and (9) and specifically mentioned that the remaining issues [Nos. (1), (5) and (6)] had yet to be disposed of. He then proceeded to say that "the former" (issue No. 1) "relates to immovable property and the latter to moveable and immovable. *Decision cannot be given in respect of the latter till certain enquiries are made and additional information is placed in the hands of the Jirga, and for this time was required. As soon as the information required is collected the Jirga will proceed to adjudicate on it.*"

It will thus be seen that the enquiry by the *Jirga* was incomplete in respect of some of the most material points in dispute. The Deputy Commissioner, instead of postponing his final orders till further enquiry had been made and findings recorded by the *Jirga* accepted (or as he says "acquiesced" in) the findings given by the *Jirga* on issues (2), (3), (4), (7).

(8) and (9), and wound up his order with the remark that "it now only remains for me to pass a decree in accordance with the terms of the decisions given in respect to each of the issues *that have been settled* and I hereby do so." He, however, took care to add that "orders with respect to *other* issues will be passed as soon as they are considered by the *Jirga*."

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It is clear that this order of the Deputy Commissioner did not, and could not, amount to a decree. It was really an interlocutory order passed by him, accepting the findings of the *Jirga* as to the mode of partition and certain other matters, but was not a final adjudication of the dispute between the parties. It is obvious that such adjudication was not possible without determining what properties were comprised in the family estate and were liable to partition. As has been stated above, the *Jirga* had definitely stated in their report that they were not in a position to give any finding on issues (1), (5) or (6), and the Deputy Commissioner himself had made it clear that these matters would be decided after the *Jirga* had made further enquiry and submitted the report. It is no doubt true that the Deputy Commissioner stated that he was passing a decree "in respect of the issues settled by the *Jirga*," but it is not clear what he really meant by these words. No decree-sheet appears to have been prepared to embody the decision—at least none has been produced before us. So far as the houses at Multan, to which the present suit relates, are concerned, it is conceded by the learned counsel for the respondents that no finding was given by the *Jirga* in their report above-mentioned, nor did the Deputy Commissioner purport to pass a decree in respect thereof. As has been stated above, the issue

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as to the extent of the joint property was left over for further enquiry by the *Jirga*, but the *Jirga* does not appear to have ever met again to enquire into and decide the outstanding issues. There is no other report by the *Jirga* on the record, nor any order by the Deputy Commissioner passing a decree, purporting to be in accordance with the findings of the *Jirga* for partition of the properties in dispute.

Respondents' counsel has referred us to a report submitted by *Sheikh Ghulam Ali, Naib-Tahsildar*, dated the 29th August, 1928, to the Sub-Divisional Officer, Rajanpur (Exhibit D. 5). In this report he attempted to value certain house property alleged to belong to the parties and we find that one of these properties (No. 6) was a house built of *pucca* masonry situate in Multan which he stated was in possession of *Sardar Bahadur Khan*, defendant, and which he valued at Rs. 15,000. This report was laid before *Sheikh Ala-ud-Din*, Sub-Divisional Officer, Rajanpur, on the 3rd September, 1928, who said that "before any report could be definitely made it was necessary to ascertain the meaning of the term 'residential houses' as used by the *Jirga* in their report in respect of issue No. 7." The report of the Sub-Divisional Officer was duly considered by the Deputy Commissioner, who ordered on the 15th September, 1928, that the house at Fort Munro could not be included in the partition but that all other houses "which had been built or acquired with joint funds" should be partitioned but that the value of the houses should be got assessed by the arbitrators in accordance with the proposals of the *Jirga*. It does not appear that any action was taken on this matter subsequent to this order except that the plaintiff attempt-

ed to have the order reviewed by the Deputy Commissioner, but his petition for review was dismissed on the 11th April 1929. Admittedly this order of the Deputy Commissioner does not amount to a decree. It does not purport to accept any finding of the *Jirga* on any of the issues in dispute, nor has it been shown that the house at Multan referred to by the *Naib-Tahsildar* is a part of the property comprised in the present suit. The value of that house was fixed by the *Naib-Tahsildar* at Rs. 15,000, but the market value of the three houses in suit is stated in the plaint to be Rs. 4,200 only.

It will thus be seen that the question whether the property in dispute is joint of the parties, as alleged by the defendants, or is owned exclusively by the plaintiff, as claimed by him, though referred to the *Jirga*, was never decided by it, nor was a decree passed by the Deputy Commissioner in accordance with the decision of the *Jirga*. It is, therefore, difficult to see how the jurisdiction of the Civil Court to try the present suit is barred.

Section 10 of the Regulation lays down that "No Civil Court shall take cognizance of any claim with respect to which the Deputy Commissioner has proceeded under section 8, sub-section (3), clause (a), clause (b) or clause (d)." Sub-section (2) of section 8 requires the Deputy Commissioner to state the matter or matters on which the finding of the Council of Elders (*Jirga*) is required. Sub-section (3) reads as follows:—

"On receipt of the finding of the Council of Elders under this section the Deputy Commissioner may—

(a) remand the case to the Council for a further finding; or

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(b) refer the case to a second Council; or

(c) refer the parties to the Civil Court; or

(d) pass a decree in accordance with the finding of the Council, or of not less than three-fourths of the members thereof, on any matter stated in the reference; or

(e) declare that further proceedings under this section are not required.”

It will thus be seen that a Civil Court is debarred from entertaining a suit only when the Deputy Commissioner, having referred the dispute in respect of the property in question to a *Jirga*, and the *Jirga* recorded a finding thereon has *either remanded the case to the Jirga for a further finding, or has referred the case to a second Jirga, or has passed a decree in accordance with the finding of the Jirga or of not less than three-fourths of the members thereof.*

Now it has been frankly conceded by the learned Advocate for the defendants-respondents that clauses (a) and (b) do not apply to the present case and we have seen already that no decree was passed by the Deputy Commissioner under clause (d). It follows, therefore, that the conditions, which would make section 10 applicable, do not exist in this case. The learned Senior Subordinate Judge in his judgment has relied on a decision of the Judicial Commissioners of the N.-W. F. Province, reported as *Sham Das-Bhim Sain v. Kalu Ram-Bashesar Nath* (1), but that case does not support the learned Judge's conclusion, and this was admitted by the respondents' counsel. For the foregoing reasons, I hold that it has been

(1) (1923) 72 I. C. 927.

wrongly held that the jurisdiction of the Civil Court to entertain and decide the case was barred.

I would accordingly accept the appeal, reverse the judgment and decree of the learned Senior Subordinate Judge and remand the case to him for trial on the merits. Court-fee on this appeal shall be refunded; other costs shall be costs in the cause.

AGHA HAIDAR J.—I agree.

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*Appeal accepted;
Case remanded.*

APPELLATE CIVIL.

Before Bhide J.

DALIP SINGH (PLAINTIFF) Appellant

versus

MST. TABI (DEFENDANT) Respondent.

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Civil Appeal No. 886 of 1933.

Punjab Limitation (Custom) Act, I of 1920, Article 1—Suit by collaterals of a deceased testator for a declaration of their title to land in their possession—mutated in name of legatee—Limitation—Indian Limitation Act, IX of 1908, Article 120.

N, the original owner of the land in suit made a registered will with respect to it in favour of the defendant, his daughter, in March 1920. After the death of N, the land was mutated in favour of the defendant on 10th August 1931. The plaintiff, a collateral of the deceased, who was in possession of the land brought this present suit for a declaration to the effect that he is its owner and that the mutation effected in favour of the defendant (on the basis of the will) is void as against his rights. The Courts below dismissed the suit as time-barred under Article 1 of the Punjab Limitation (Custom) Act, 1920.