

APPELLATE CIVIL.

Before Young C. J. and Din Mohammad J.

SULTAN AND ANOTHER (DEFENDANTS) Appellants

versus

BAHADUR AND ANOTHER (PLAINTIFFS)	}	Respondents.
PAHLWAN AND OTHERS (DEFENDANTS)		

Civil Appeal No. 2458 of 1929.

Punjab Land Revenue Act, XVII of 1887, Section 117 (1) : Jurisdiction of Revenue Officer — to decide question of title—when no case for partition is pending in his Court.

Held, that under Section 117 (1) of the Punjab Land Revenue Act, 1887, a Revenue Officer can exercise the jurisdiction of a Civil Court only, if there is an application for partition of the property pending in his Court. If there is no such application pending, he has no authority to adjudicate on the question of title of any property whatsoever, and the whole proceedings taken by him in this case including the proceedings on appeal are, therefore, vitiated.

Second Appeal from the decree of Mr. D. D. Dhawan, District Judge, Jhang, at Sargodha, dated 17th July, 1929, affirming that of Sardar Bahadur Khan, Revenue Officer, exercising the powers of a Subordinate Judge, 1st Class, Jhang, dated 21st January, 1929, decreeing the plaintiffs' suit.

GHULAM MOHY-UD-DIN, for Appellants.

FAKIR CHAND, for (Plaintiffs) Respondents.

The judgment of the Court was delivered by—

DIN MOHAMMAD J.—The facts of the case, out of which this appeal has arisen, are as follows:—

The plaintiffs, Bahadar and Pahlwan, brought a suit against the defendants, Pahlwan, Waryam and others, for a declaration of rights to the effect that

they were the owners and possessors of 977 *kanals* of land situated in village Bharwana in the district of Jhang. This suit was instituted on 17th January, 1927, in the Court of *Sardar* Bahadur Khan, Revenue Officer, with powers of an Assistant Collector of the first grade. Under the provisions of section 117, sub-section (1) he proceeded to determine the case as though he were a Civil Court and granted the plaintiffs a decree as prayed for. On appeal to the learned District Judge the order of the learned Assistant Collector was affirmed.

The defendants have now come up in second appeal to this Court and *M. Ghulam Mohy-ud-Din*, who has argued the case on their behalf, has, *inter alia*, contested the jurisdiction of the learned Assistant Collector to hear the suit as a Civil Court, and, on this basis has prayed that the whole proceedings be set aside for want of jurisdiction. He has urged that an application for partition was pending in the Court of the Assistant Collector, 1st grade, in 1925 when he originally proceeded to determine the question of title in the capacity of a Civil Court. The plaintiffs did not appear in his Court on the date fixed for their appearance and their prayer for the determination of the question of title, which the learned Assistant Collector had treated as a plaint, was refused. Consequently, on the 3rd February, 1925, an order was passed in the following terms:—

“ See my order of to-day dismissing the plaintiffs’ suit. As they have failed to prove their title their application for partition is refused under section 115 of the Land Revenue Act.”

It appears that no steps were taken by the plaintiffs to have this order set aside and it was still subsisting as a valid order when, in January, 1927, the

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present suit was brought. The learned counsel contends that, as no application for partition was pending before the Revenue Officer at the time when the present suit was instituted, he had no jurisdiction to convert himself into a Civil Court and entertain the plaint and determine the question of title. He relies on sub-section (1) to section 117 of the Land Revenue Act in support of his contention. Now, this section clearly says that "when there is a question as to title in any of the property of which partition is sought, the Revenue officer may * * * himself proceed to determine the question as though he were such a Court." It is essential, therefore, that before a Revenue Officer can exercise the jurisdiction of a Civil Court, there must be an application for the partition of the property pending in his Court with regard to the title of which he can undertake to adjudicate as a Civil Court, and if there is no such application pending, he has no jurisdiction to usurp the function of a Civil Court and to adjudicate on the question of title relating to any property whatsoever. It will further be clear from a perusal of the proviso (a) to sub-section (1) to section 15 of the Land Revenue Act that a Revenue Officer of a class below that of a Collector cannot review any order passed by himself unless he first obtains the sanction of the Revenue Officer to whose control he is immediately subject. There is nothing on the record to show that the order, dated the 3rd of February, 1925, was ever reviewed in accordance with law and, in these circumstances, it is quite obvious that, at the time when the learned Assistant Collector, 1st grade, entertained this civil suit he had no application for the partition of the land which was the subject matter of the suit pending in his Court. He had,

therefore, no jurisdiction to entertain the suit and on this ground the whole proceedings taken by him, including the proceedings on appeal, are vitiated. We, therefore, uphold the objection raised by the learned counsel for the appellants, set aside the decrees of the Courts below and dismiss the plaintiffs' suit with costs throughout.

A. N. C.

Appeal accepted.

APPELLATE CIVIL.

Before Tek Chand and Bhide JJ.

ABDUL RAFI KHAN (PLAINTIFF) Appellant

versus

LAKHSHMI CHAND (DECEASED) AND OTHERS
(DEFENDANTS) Respondents.

Civil Appeal No. 403 of 1926.

Custom — Alienation — Ancestral property — Rajputs of Tahsil Gohana, District Rohtak — Full power of alienation — except for immoral purposes — Riway-i-am.

Held, that by custom an alienation of ancestral property by a male proprietor of the Gohana Tahsil of the Rohtak District cannot be challenged unless it is made for immoral purposes.

Behari v. Bhola (1) and other cases, referred to.

Riway-i-ams, discussed.

First Appeal from the decree of Lala Munshi Ram, Senior Subordinate Judge, Rohtak, dated 23rd November, 1925, dismissing the plaintiff's suit.

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

J. N. AGGARWAL, SHAMAIR CHAND, J. L. KAPUR and QABUL CHAND, for Respondent No. 1.

NAND LAL, for PRABHU DIAL, Respondent.

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