

**APPELLATE CIVIL.**

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*Before Addison and Din Mohammad JJ.*

SEWA AND ANOTHER (PLAINTIFFS) Appellants,

*versus*

MOHAN SINGH AND OTHERS (DEFENDANTS)

Respondents.

1938

April 1.

**Civil Regular First Appeal No. 364 of 1937.**

*Punjab Land Revenue Act (XVII of 1887) SS. 3 (2), III — Mortgagee, whether owner of land within the meaning of S. III and whether can claim partition.*

*Held*, that a mortgagee of a certain share of land is not a joint owner of land within the meaning of s. III of the Land Revenue Act and is not, therefore, entitled to claim partition under the section.

*Buta v. Mst. Jicani* (1), relied upon.

Other case law discussed.

*First appeal from the decree of Sayad Rafiq Ahmed, Senior Subordinate Judge, Lyallpur, dated 9th July, 1937, dismissing the plaintiffs' suit.*

RAM LAL ANAND I, for Appellants,

ACHHRU RAM, QALANDAR ALI KHAN and M. L. CHAWLA, for Respondent (No. 1).

The Judgment of the Court was delivered by—

DIN MUHAMMAD J.—The facts of the case out of which this appeal has arisen may shortly be stated.

One Sawan Singh mortgaged his land to three sets of persons in three different shares, and of these a 8/15th share was mortgaged to Sewa and Kahan Singh. The mortgage relating to the remaining 7/15th share was redeemed but the mortgage in favour of Sewa and Kahan Singh continued. These two mortgagees instituted a suit for possession of the whole land and on appeal to this Court obtained a decree for

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joint possession of a 8/15th share in the land in suit. This happened on the 5th November, 1935. Having obtained this decree they made an application to the Revenue Officer concerned for partition under the Land Revenue Act. The Settlement Officer who heard the petition dismissed it on the ground that the petition could not succeed so long as the petitioners did not obtain an order from the Civil Court. Thereupon Sewa and Kahan Singh instituted the present suit praying for a declaration that they were entitled to have their own share separated off. This suit was resisted by the mortgagors and dismissed by the Senior Subordinate Judge mainly on the ground that a mortgagee was not an owner of land within the meaning of section 111 of the Punjab Land Revenue Act and could not, therefore, claim partition. The plaintiffs have appealed.

Counsel for the appellants has referred us to the definition of the term "land-owner" as contained in clause (2) of section 3 of the Land Revenue Act and argued that inasmuch as a mortgagee is covered by this definition, he is a person contemplated by section 111 of the Land Revenue Act, and the words "owner of land" convey the same meaning as the term "land-owner." We, however, consider that the interpretation put on the words "owner of land" by the appellants' counsel is not legally correct. In *Buta v. Mst. Jiwani* (1) a Full Bench of the Punjab Chief Court observed as follows:—

"The word used in section 111 is 'owner,' not 'land-owner' and, in our opinion, the two terms are not synonymous. 'Land-owner' has a very wide signification and includes many persons whose interests in land are of a limited or ephemeral character.\* \*"

The word 'owner' has not been defined in the Act and according to the accepted canons of interpretation we must, unless the context negatives such a construction, take it to have been used in its ordinary sense."

In *Muhammad Din v. Muhammad* (1), Abdul Raof J. approved of the observations made in *Chowdhri Thakar Dass v. Sultan Bakhsh* (2) and remarked that a mortgagee with possession might come under the definition of landlord but he was in no sense an owner and had consequently no *locus standi* to object to the correctness of the partition proceedings.

We are in respectful agreement with the observations made in these judgments and consider that unless the interpretation as suggested by these judgments is adopted, a queer situation is likely to arise in certain cases inasmuch as a land-owner as defined in section 3 includes even a person to whom a holding has been let in farm for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear.

Reference has been made to *Hardial v. Hakim* (3) and *Hira Singh v. Devi Ditta* (4) in support of the contention that in case a mortgagee obtains a decree from a Civil Court establishing his right to partition, a Revenue Officer is bound to enforce that decree. It is true that while holding that a mortgagee as such was not entitled to partition, some remarks to the effect indicated above were made in these two judgments; but we doubt the correctness and legality of those remarks. Section 111 of the Land Revenue Act confers the right of partition only on joint owners or joint tenants and unless a person falls under either of

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(1) 1921 A. I. R. (Lah.) 83.

(3) 11 P. R. (Rev.) 1885.

(2) 2 P. R. (Rev.) 1918.

(4) 4 P. R. (Rev.) 1903.

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these categories, he cannot claim partition of agricultural land as of right. And when once it is held that a mortgagee is not an owner of land, we fail to see how he can enforce partition under section 111 in any manner and how a Civil Court can support his claim.

Our attention was further drawn to *Sher Singh v. Mulla Singh* (1), where Mr. Young, Financial Commissioner, lays down that no one even though he may be a land-owner as defined in section 3 is entitled to claim partition unless he fulfils one or other of the three conditions of section 111 of the Land Revenue Act. But with all respect we consider that while using the term 'land-owner' the Financial Commissioner did not clearly realise its full implications. The term used in section 111 is "owner of land" and not land-owner, and the conditions laid down in (a), (b) and (c) of section 111 come into play only if the requirements laid down in the substantive part of the section are satisfied. So long therefore as a person cannot claim the benefit of the substantive part, the conditions enumerated in (a), (b) and (c) would not avail him in any manner.

Holding that the plaintiffs as mortgagees are not owners of land within the meaning of section 111 of the Land Revenue Act, we maintain the decision of the Court below and dismiss this appeal with costs.

A. K. C.

*Appeal dismissed.*