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TOOLY BHOOSUN BONNERJEE v. TARAPRO-SONNO BONNERJEE.

PONTIFEX, J. [following the opinion of Phear, J., in *Cally Churn Mullick* v. *Janova Dossee* (1), to the effect that in such a case as this the widows are entitled to share with their sons], ordered the plaint to be amended by adding the widows as parties.

Attorney for the plaintiff: *Shamaldhone Dutt.*

Attorney for the defendants: *Mohendronauth Bonnerjee.*

APPELLATE CIVIL.

Before Mr. Justice Jackson and Mr. Justice Tottenham.

NILMONEE SINGH DEO (PLAINTIFF) *v.* RAMBUNDHOO ROY AND OTHERS (DEFENDANTS.)*

1878 *June* 6.

Land Acquisition Act (*X of* 1870), *ss.* 38, 39, 40, 58—*Compensation, Apportionment of—Right of Suit.*

A decree which apportions compensation made under s. 39 of the Land Acquisition Act (X of 1870) by a Court to whom such matter has been referred under s. 38 of the same Act is final and cannot be questioned otherwise than by the appeal permitted under s. 39.

Dwarka Singh v. *Solano* (2) dissented from.

THIS was one of six appeals in which the same question arose and in which the plaintiff appellant was the same. The plaint in the first suit alleged that certain land had been taken up for public purposes by the Government under the Land Acquisition Act; and that the value of this land had been fixed at Rs. 15,681-6-6; that a reference had been made to the District Judge in order to the apportionment of this compensation; that the Judge had on the 31st July 1876 made a decree apportioning the compensation among the parties interested; that the plain-

* Regular Appeals, Nos. 143, 144, 146, 147, 148, and 149 of 1877, against the decree of C. D. Field, Esq., Judge of Zilla East Burdwan, dated the 12th May 1877.

(1) 1 Ind. Jur., N. S., 284. (2) 22 W. R., 38.

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tiff had only been awarded Rs. 84, out of the said sum of Rs. 15,681-6-6, set apart for compensation, but for the reason in the plaint stated the plaintiff was entitled to receive Rs. 13,543-0-3, in addition to the sum of Rs. 84 already awarded him. The plaintiff prayed for an order for the payment of this sum. Seven other cases, involving analogous claims, were also tried in company with this suit. The defendants in the first six of these cases pleaded *inter alia*; that the decision of the Judge on the apportionment of the compensation was final under s. 2, Act VIII of 1859. The defence set up in respect of the two last of the series of cases was that the Collector authorised to make the reference had not in fact made such reference to the Civil Court in order to have the amount of compensation apportioned, but had retained the amount in deposit until the parties had adjusted their rights by a Civil suit. The first issue fixed in the case was whether these suits were maintainable.

The Court of first instance, being of opinion that such suits were not maintainable, dismissed the first six of the series of cases on the preliminary point. In respect of the other two cases, the Court went into evidence, and, on the facts, also dismissed the plaintiff's claim.

The plaintiff appealed (the first six of the series of cases) to the High Court.

Baboo *Chunder Madhub Ghose* and Baboo *Bhowany Churn Dutt* for the appellant.

Baboo *Mohini Mohun Roy* and Baboo *Anund Gopal Palit* for the respondents.

Baboo *Chunder Madhub Ghose* for the appellant.—Such suit is maintainable.—See proviso of s. 40 of Act V of 1870, which expressly leaves it open to parties dissatisfied with the apportionment of compensation under s. 39 of the same Act, to litigate the matter in the Civil Court. The use of the word "award" in s. 58 narrows the application of that section to cases where a decision has been given as to the amount of money representing a fair compensation for the lands taken up by the

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Government, and does not apply to cases where disputes subsequently arise between the parties interested concerning the distribution of such amount among themselves. See also *Dwarka Singh* v. *Solano* (1) which is an express authority in favor of the contention that these suits are maintainable. Also *Kaminee Debia* v. *Protap Chunder Sandyal* (2).

Baboo *Mohini Mohun Roy* for the respondents.—The proviso attached to s. 40 was introduced into the Act in order to give persons, not parties to proceedings under s. 39, an opportunity of coming in to shew their right to the compensation money against such persons who had been parties in such proceedings. If a claimant is made a party to compensation proceedings under the section, and has had his claim adjudicated upon, the decision is final, except by the appeal given under that section. The word 'award' in s. 58 has a more extended meaning than that contended for on the other side. Section 40 says, that "payment of the compensation shall be made by the Collector *according to the award* to the person named therein;" if payment is to be made according to the award it is clear that the award must specify the proportions in which the persons interested are to receive the money. *Dwarka Singh* v. *Solano* (1) is the decision of a single Judge, and, therefore, not binding on this Court. The point in dispute in the present case was not raised in *Kaminee Debia* v. *Protap Chunder Sandyal* (2).

The judgment of the Court was delivered by

JACKSON, J.—The question which we are called upon to determine in these six appeals touches the finality of a decision of the District Court; or in case of an appeal; of the High Court as a Court of Appellate Jurisdiction under s. 39 of Act X of 1870, otherwise called the Land Acquisition Act of 1870. In all these cases the subject of dispute is the amount of compensation awarded by the Collector in respect of land taken up for public service, in respect of which compensation, a dispute as to the apportionment thereof arose, and a reference was made

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thereupon under s. 38 of the Act with a view to a decision by the Court—the Court meaning as explained in the definition clause of the Act, "the Principal Civil Court of Original Jurisdiction" no other Judicial Officer having apparently been appointed for that purpose in the District of Burdwan. The parties contending were the zemindar, certain persons called jagirdars, and other persons having subordinate rights, and by the decision of the Court under s. 39 by far the largest share of the compensation went to the jagirdars. This suit, therefore, was brought by the zemindar to establish his paramount right over that land, and in that way to make himself out entitled to the compensation which the Court had given to the jagirdars, that is to say, to re-open in a regular suit the precise question which had been settled by the decision under the Land Acquisition Act.

The District Judge of Burdwan in a very elaborate and learned judgment has held that such suits will not lie, that the decision of the Court under the Act is final, and is not open to be questioned otherwise than by the appeal which the section allows.

The appellant before us contends that the power to question such decision by a regular suit is expressly reserved to him by the proviso to s. 40. He urges that the 58th section of the Act on which the Judge relies has no reference to the present question, and he relies on the authority of two cases in this Court to which I shall presently refer. As to s. 58, I am inclined to think that it has no direct reference to the question before us. It excludes suits to set aside an award under the Act, and I think the term "award" there used does not include the decision of the Court under s. 39. But at all events it is so far useful in considering this question that it indicates the intention of the legislature to make proceedings under this Act final, and to make the mode of dealing with the questions to be raised under this Act exhaustive and self contained. The proviso in s. 40 follows a declaration that "payment of the compensation shall be made by the Collector according to the award to the persons named therein, or in the case of an appeal under s. 39 according to the decision on such appeal." That no doubt is intended to

include the case of a decision under s. 39. It provides that any person, who may receive the whole or any part of the compensation awarded under this Act, shall be liable to pay the same, and no doubt compellable by suit to pay the same to the person lawfully entitled thereto, just in the same manner as a person who may have received a certificate under Act XXVII of 1860, is compellable by suit to pay any money which may have come into his hands under that certificate to the person entitled thereto, and what the legislature had in view I think was, that if any person by virtue of a particular title, which was not really vested in him at the time, should prevail against any person claiming under a different title before the Court upon the question of apportionment, he shall be liable and compellable to pay over the money which he may have received under that decision to some other person not a party to the process in whom that title really vested, not that it should be competent to the parties after a full investigation before the Court under s. 39, and after an appeal as allowed by that section, to bring a regular suit and re-open the identical question before a different Court. If that were so, as observed by the District Court, we might have a decision arrived at by the District Judge after an investigation conducted with all the formalities prescribed by the law, and under the Procedure of the Code, whether it is called a decree or not, and a formal decision by the High Court on appeal from that decision liable to be set aside upon a further suit in a Munsif's Court, and in certain circumstances the decision of the Munsif in such suit might become final. Some stress was laid by the appellant upon the fact that s. 37 in express terms gives finality to certain awards, and declares that as between the persons interested who may agree in the apportionment of the compensation, the award should be conclusive evidence of the correctness of the apportionment, and it was said that if the legislature had intended to give finality to the decision of the Civil Court under s. 39, the intention would have been expressed in distinct terms, and a somewhat similar use was made, at least I understood it to be made, of the terms of s. 58 itself, *viz.*, it was contended that whereas that section forbids the bringing of a suit to set aside an award under the

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Act, it does not forbid the bringing of a suit to set aside the decision of a Court. I apprehend that what is intended by the terms of s. 37 or of s. 58 is nothing more than this, that it places awards made under the Act by express legislation upon the same footing of finality as a decision of the Court under s. 39 is by the ordinary principles of law.

It is contended that the jurisdiction of the Court to entertain a suit is not barred by s. 1 of Act VIII of 1859, except it be by express provision of the law. In the first place, Act X of 1870 is an Act subsequent to Act VIII of 1859, and contains, as it appears to me, abundant evidence of the intention of the legislature that all proceedings in regard to land acquisition and compensation should be conducted under the Act and not otherwise. In addition to that, it seems to me that s. 2 would bar the bringing of the present suits, inasmuch as the causes of action, if there be any, on which the suits proceeded, have been already determined by a Court of competent jurisdiction in the manner provided by the law. I think, therefore, that upon the construction of this Act, a decision of the Court, if not appealable, and if there is an appeal, then the decision of the Appellate Court, is final, and not liable to be contested by a suit.

We have then been referred to two cases in which the learned Judges of this Court are said to have entertained a different opinion. The first of these cases is *Dwarka Singh* v. *Solano* (1). That is the decision of a single Judge of this Court in special appeal in a case not exceeding Rs. 50 in value, and although such a decision of this Court is entitled to the greatest respect, it is not, it must be admitted, so binding upon a Division Bench as to compel a reference to the Full Bench. I have read and considered the opinion expressed by the learned Judge Mr. Justice Ainslie; whose opinion, I need not say, is deserving of the greatest attention, but I am unable to concur in the view which he has expressed. That opinion is stated in these words. After discussing various sections of the Act, he says:—"I hold that the order of distribution is not a final order on adjudication of the rights of the parties to the proceedings under the Land Acquisition Act to the property for which compensation has been

(1) 22 W. R., 38.

assessed and awarded. Were it otherwise, it seems to me that questions involving title to properties, of which the land taken for public purposes might be a trifling fraction, would be finally adjudicated in proceedings under the Act — a result which cannot have been contemplated by the legislature." That in all respects appears to me a reason which would be applicable to every decision in which rights of an important or extensive character came to be adjudicated, although the particular subject before the Court happened to be of a small value. That is a state of things which constantly arises. As to the nature of the enquiry, I have already said that an enquiry in a land acquisition case is or should be just of as careful and formal a character as any in a regular suit.

The other decision referred to is that of a Division Bench in the case of *Kaminee Debia* v. *Protap Chunder Sandyal* (1). The judgment is delivered by Mr. Justice Macpherson on appeal against a judgment of Mr. Justice McDonell, but I think it clear that in that case the question now before us was not in any shape brought before the Court. That was a suit to recover from the defendants the sum of Rs. 20, which had been paid to one of them as compensation awarded under the Land Acquisition Act, and also to have the plaintiff's title declared to two cottas of land which she claimed. There is nothing to show that the plaintiff had been one of the parties before the Court on the question of apportionment of compensation. The learned Judges observe :—"The award under the Land Acquisition Act cannot be in any way affected by this suit, and, therefore, s. 58 of the Land Acquisition Act cannot apply." This case, therefore, may be dismissed from consideration as not bearing on the question before us. I think, therefore, that this question is not concluded by authority in any shape, and as our opinion is quite clear upon this point, we affirm the judgment of the Court below in these six appeals, which are dismissed with costs.

Appeals dismissed.

(1) 25 W. R., 103.