

Daljit Singh Vs. Shambhu Singh

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Court : Allahabad

Decided On : Jun-14-1915

Reported in : AIR1915All452; 30Ind.Cas.189

Judge : Piggott, J.

Appellant : Daljit Singh

Respondent : Shambhu Singh

Judgement :

Piggott, J.

1. The question for determination in this appeal is whether this suit was barred by the provisions of Section 233(k) of the United Provinces Land Revenue Act, Local Act No. III of 1901. According to that Section the Civil Court is debarred from taking cognizance of any suit with regard to the partition or union of mahals. The section itself is drawn up in broad terms and it has been applied broadly by this Court ever since the Full Bench decision in Muhammad Sadiq v. Laute Ram 23 A. 291 (F.B.) : A.W.N. (1900) 86. That decision was under the former Land Revenue Act, No. XIX of 1873, the wording of which differed somewhat. The provisions of Section 233(k), as they now stand, were considered by two Judges of this Court in Lachman Das v. Hanuman Prasad 8 Ind. Cas. 807 : A.L.J. 1156 : 33 A. 169. I understand that ruling as laying down the broad principle that where there has been a partition of a certain mahal by a Revenue Court, resulting in a certain

distribution of the lands of that mahal being effected, if any error has been made in connection with this distribution to the prejudice of a particular co-sharer, the remedy of the latter is by way of application to the Revenue Court itself to correct its own mistake. Any exercise of jurisdiction on the part of a Civil Court which would disturb, or in any way affect, the distribution of land made on a partition, is barred by Section 233(k) of Act III of 1901. The facts of the present case are given at length in the very careful judgment of the learned Munsif, It appears that the mahal with which we are concerned had been divided by perfect partition in the year 1875. A number of pattis had been formed, one of which pattis, No. 9, was known as patti shamilat and consisted of those lands which had not been divided amongst the co-sharers, that is to say, the joint lands in which all the co-sharers of the various pattis retained their rights according to their proportionate shares. In the year 1904 Daljit Singh, who is the defendant in the present case, presented an application for the separation, by perfect partition, of his share in pattis Nos. 4 and 5 and also of his share in shamilat patti No. 9, Notice of this application was issued to all the co-sharers of all the various pal Us in the mahal. The Assistant Collector, however, came to the conclusion that there were objections to perfect partition, and intimated as much to Daljit Singh. The latter thereupon presented a fresh application on the 25th of March 1905 asking the Court to separate his share by imperfect partition only, thus forming it into a new patti. The learned District Judge seems to have felt some doubt as to whether on this application any actual partition of the lands appertaining to the shamilat patti No. 9 could have followed, or actually did follow. Obviously, when Daljit Singh's application was limited to one for imperfect partition, no actual partition of the lands appertaining to the patti shamilat would follow. A new patti would be created by separating Daljit Singh's share in lands appertaining to pattis Nos. 4 and 5 from those of the other co-sharers in the same pattis. In the course of carrying out this imperfect partition the Assistant Collector laid hold of a plot .69, .69 of an acre in area, shown as No. 1956 in the village map. He treated this as appertaining to path No. 4 and divided it amongst co-sharers of that patti, assigning to the defendant-appellant, .49, .49 as his share in the same, The plaintiff in this case, Shambhu Singh, has acquired since the partition the proprietary rights which belonged in the years 1904 and 1905 to a co-sharer named Dular Singh. He contends that plot No. 1956

above referred to never appertained to patti No. 4 at all, but formed part of the land appertaining to patti No. 2 in which Dular Singh was a co-sharer. He suggests that the proceedings of the Assistant Collector dealing with this plot in the course of the partition of 1905 were a pure mistake. The Courts below have gone into the question of fact. Apparently it was not a question which could be settled off hand on a mere inspection of the village records. It turned upon a comparison of the existing village records with the older papers and the ascertainment and location of the older numbers which went to make up plot No. 1956 in the present village map. The Courts below have, however, found that plot No. 1956 did appertain to patti No. 2 and was wrongly included by the Assistant Collector in patti No. 4 and partitioned amongst the co-sharers of that patti. Assuming that this finding is correct, the plaintiff has suffered an injury, but the question remains whether his remedy is by way of suit in a Civil Court or, as was said in the ruling to which I have already referred, by way of application to the Revenue Court to correct its own mistake. Both the learned Munsif and the learned District Judge have taken the view that the case stood on an entirely different footing from the moment that Daljit Singh applied to the Revenue Court to separate his share from the rest of the mahal by imperfect instead of by perfect partition. It certainly cannot be denied that, if the proceedings had continued on the application for perfect partition as originally brought, and the Assistant Collector had, however erroneously, taken this plot of land and divided it amongst the co-sharers in patti No. 4, a suit would not have been maintainable in the Civil Court to disturb that apportionment. I understand the District Judge to mean that the sharers in the remaining pattis, other than pattis Nos. 4, and 5, ceased to have any interest in the partition, or to be under any obligation to watch the proceedings in the Assistant Collector's Court, from the moment that Daljit Singh's application was limited to an application for imperfect partition. The only reported case I can find, which lends some support to the decision of the Courts below is that of *Kishen Prashad v. Kadher Mal* A.W.N. (1900) 11 which was a single Judge case. So far as I can discover from the reported cases of this Court it has only once been considered by a Bench of this Court, and that was in *Jagan Nath v. Tirbeni Sahai* 1 Ind. Cas. 696 : 31 A. 41 : A.W.N. (1908) 274. It was then distinguished against, though not expressly dissented from. It seems to me that the plaintiff is not entitled, in the present case,

to ask the Court to treat the Assistant Collector's proceedings as a nullity. On Daljit Singh's application for partition the Assistant Collector had to ascertain what lands belonged to pattis Nos. 4 and 5 and to apportion them between the recorded co-sharers of the said patti. He would have to do this equally on an application for imperfect partition as on an application for perfect partition. It may be that the Assistant Collector came to an erroneous decision when he included this plot No. 1956 in the area which he proceeded to apportion amongst the co-sharers of patti No. 4. Nevertheless he did so, and it seems to be impossible to say that he had jurisdiction to do so. This case is really distinguishable from that of Kishen Prashad v. Kader Mal A.W.N. (1900) 11 because in the present case all the co-sharers in the shamilat patti, including the proprietors of patti No. 2, had notice of the partition proceedings. I am not sure that I should myself have been disposed to regard this as in itself decisive, but it seems to me that I am bound to follow the general principle laid down in Lachman Das v. Hanuman Prasad 8 Ind. Cas. 807 : 7 A.L.J. 1156 : 33 A. 169 unless something can be shown to take the case before me outside the operation of that principle. In my opinion this appeal must succeed. The suit was not cognizable by reason of the provisions of Section 233(k) of the Land Revenue Act and should have been dismissed accordingly. I accept this appeal, and setting aside the decrees of both the Courts below dismiss the plaintiff's suit with costs throughout.