

Deoki Dube and ors. Vs. Uma Dat and ors.

Deoki Dube and ors. Vs. Uma Dat and ors.

SooperKanoon Citation : sooperkanoon.com/478859

Court : Allahabad

Decided On : Dec-11-1922

Reported in : AIR1923All369; 71Ind.Cas.292

Judge : Stuart, J.

Appellant : Deoki Dube and ors.

Respondent : Uma Dat and ors.

Judgement :

Stuart, J.

1. The facts in the connected Second Appeals Nos. 546 and 547 of 1921 can be stated very shortly: The plaintiffs-appellants in these two appeals are Deoki Dube and others. They lay claim to 8 biswas and 12 dhurs in one mahal and 5 biswas and 14 dhurs in another mahal. They are co-sharers in the village Narhi Buzurg. The defendants are also co-sharers. The dispute arose in this manner. In 1913 one of the defendants applied for an imperfect partition of the village under the provisions of Chapter VII, Local Act III of 1901. The plaintiffs joined in the application, and during those proceedings they laid claim as proprietors to the plots in question. Their proprietary title was questioned. A situation then arose, such as is contemplated in section in of the Act, and it was open to the Revenue Court to postpone decision until the question of proprietary title had 'been decided by a competent Civil Court, or to force the parties into a Civil Court within three

months for determination of the question, or to decide the question itself. It clearly did not take, either of the first two courses, and, in so far as I have been able to ascertain from the record, the Assistant Collector conducting the partition proceedings decided these questions adversely to the plaintiffs. The plaintiffs in 1917 instituted suits in the Court of the Munsif to obtain title to the property. The Munsif found on the 28th February 1918 that these suits were barred by the provisions of Section 233(k) of the Act, and his decision has been upheld by the lower Appellate Court.

2. It is argued before me that, so far, the partition proceedings have not become complete as they have not been confirmed by the Collector under Section 131. On the record there is no evidence that they have been confirmed by the Collector. The learned Counsel for the respondents is instructed that they have been confirmed, but there is nothing on the record to show this, and I must take it, on the facts before me, that they have not been confirmed. It, therefore, remains to be decided whether Section 233(k) has application in a case such as this, in which a question of proprietary title is raised before the Revenue Court and the Revenue Court has refused impliedly to permit its decision by a Civil Court, and has proceeded, to determine the question itself, but where the decision has not become final. I think the section has application and must have application for the following reasons: As I read section in the determination of a question of proprietary title which arises in partition proceedings under Chapter VII is with the Revenue Court, unless or until the Revenue Court has divested itself of jurisdiction to decide the question by referring its decision to a Civil Court. In every case, a suit to decide a question of proprietary title which has been raised in such partition proceedings cannot be entertained by a Civil Court unless and until it has authority from the Revenue Court to entertain it. It is clear that if any other view were taken an impossible situation would arise. During the partition proceedings the same point might be the subject of decision both in a Civil Court and in a Revenue Court, and if the decisions arrived at were different, there is nothing to show which decision would prevail. Therefore, I consider that the Courts below were correct. If the question has not yet been decided in the partition proceedings the plaintiffs must wait until it is decided when it is decided it will be open for them, if they are dissatisfied with the decision, to appeal against that decision under Section 112. I

am not in a position to know whether they will have any remedy if the question has already been decided finally by the Revenue Court, and they have not appeared. In any circumstances, these appeals fail and are dismissed with costs which include fees on the higher scale.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com