

# Abdul Rejak Laskar vs Mafizur Rahman on 20 December, 2024

2024 INSC 1023

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 14805 OF 2024  
(arising out of SLP (C) No. 19226 of 2022)

ABDUL REJAK LASKAR

...Appellant(s)

VERSUS

MAFIZUR RAHMAN & ORS.

...Respondent(s)

JUDGMENT

J.B. PARDIWALA, J. :-

For the convenience of exposition, the present judgment is divided into the following parts:

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1. Leave granted.

2. This appeal arises from the judgment and order passed by the Gauhati High Court in Regular Second Appeal No. 243/2014 dated 22.08.2022, by which the second appeal filed by the respondents herein (original defendants) came to be allowed thereby setting aside the Judgment and order passed by the First Appellate Court and

restoring the Judgment and decree passed by the Trial Court.

3. For the sake of convenience, the appellant – herein shall be referred to as the original plaintiff and the respondents – herein shall be referred to as the original defendants.

#### A. FACTUAL MATRIX

4. The facts giving rise to this appeal may be summarized as under.

a. It is the case of the appellant herein (original plaintiff) that sometime in 1973, the respondents herein (original defendants nos. 1 and 2 respectively) acquired ownership of 02 katha and 10 lechas of land of one Javed Ali by inheritance. Pursuant thereto, the respondent nos. 1 and 2 respectively as joint owners took over possession of their respective shares each admeasuring 01 katha and 05 lechas. b. The respondent no. 1 herein vide two separate registered sale deeds dated 18.05.1977 and 25.07.1977 respectively sold his entire 01 katha and 05 lechas of the land in Dag No. 787 of PP No. 127 situated in Nagaon to the appellant herein in the following manner:

i. Registered sale deed no. 3198/77 for 01 katha of land.

ii. Registered sale deed no. 6292/1977 for 05 lechas of land.

c. Possession over the said portion of the land was handed over to the plaintiff. However, soon thereafter, defendant nos. 1 and 2 tried to forcibly dispossess the plaintiff from the suit property.

d. Aggrieved by the forcible dispossession, the appellant herein instituted Title Suit No. 67/1979 for confirmation of his right, title and interest and declaration of possession over the suit land admeasuring 01 katha 05 lechas covered by Dag. No. 787.

e. The Title Suit No. 67/79 instituted by the plaintiff came to be decreed in favour of the plaintiff vide judgement and order dated 29.06.1981. Aggrieved by the same, the defendants preferred an appeal against the judgment. The appeal came to be allowed and the matter was remanded back to the Trial Court for fresh consideration in light of the non-joinder of necessary parties.

f. Upon fresh trial subsequent to the aforesaid judgment, Title Suit No. 67/79 instituted by the plaintiff came to be dismissed by the court of Munsif vide judgement dated 17.09.1990 holding that although the appellant had acquired right, title and interest over the suit property yet no effective decree could be passed due to non-joinder of necessary parties.

g. In view of the aforesaid, the plaintiff herein preferred Title Appeal No. 59/1990 before the Assistant District Judge, Nagaon, Assam seeking to challenge the judgment and order passed by the

court of Munsif referred to above.

h. The Appellate Court vide order dated 20.04.1993 passed in Title Appeal No. 59/1990 held that the appellant herein was entitled to a decree for declaration of right, title and interest and also joint possession of suit land along with other co-pattadars. However, the Appellate Court held that as the appellant could not be delivered possession of the suit land, he would be at liberty to seek appropriate remedy, seeking partition of the suit land.

i. The defendants herein preferred Second Appeal No. 77 of 1993 before the Gauhati High Court which came to be dismissed vide judgment and order dated 22.10.1998. As a result, the decree passed by the first appellate court attained finality.

j. As the plaintiff was granted only joint possession of the suit property vide order dated 20.04.1993, he instituted the Partition Case No. 45/99-2000 before the Additional Deputy Commissioner, Nagaon, seeking imperfect partition of the suit land under the Assam Land and Revenue Regulation, 1886 for short, "the Regulation, 1886". k. The Additional Deputy Commissioner vide his order dated 12.07.2004 declined to partition the suit land on the ground that the plaintiff was not in actual possession of the land and there was no consent from the other co-sharer of the land.

l. The plaintiff, in such circumstances referred to above, instituted Title Suit No. 83 of 2004 before the Civil Judge Nagaon, praying for delivery of a Khas possession of land measuring 01 kathas 05 lechas to the appellant herein after partition of the land and also prayed for appointment of a commissioner for effecting the partition. The reliefs prayed for in the suit are as under:

"It is, therefore, prayed that (ka) order may be passed for delivery of khas of land measuring 1 katha 5 lechas described in the schedule (ka) of the plaint to the plaintiff after partition of the land; (kha) A commissioner may be appointed at the time of partition for effecting partition;

(ga) Issue precept to the revenue authorities for correcting the records and issue of separate patta in favour of plaintiff; (gha) full cost of the suit may be decreed in favour of the plaintiff;

(unga) any other relief/reliefs which are entitled by the plaintiff under law and equity." m. The defendants filed their written statements inter alia taking the stance that the civil court had no jurisdiction, and it is only the revenue authority which has the jurisdiction to partition the land.

n. The Trial Court having regard to the pleadings of the parties framed the following issues for its consideration:

"1) Whether there is any cause of action for the suit?

2) Whether the suit is maintainable in its present form?

- 3) Whether the suit is bad for non-joinder of necessary parties?
- 4) Whether the plaintiff is entitled for partition of suit land as per provisions of ALRR 1886?
- 5) Whether the TS 67/79 was decreed in favour of the plaintiff?
- 6) Whether the plaintiff is entitled to a decree as prayed for?
- 7) To what other relief/reliefs the parties are entitled?” o. The Civil Judge (Jr. Div.) No. 1 Nagaon, Assam vide its judgment and order dated 16.07.2011 dismissed the Title Suit No. 83/2004 instituted by the plaintiff on the ground that the plaintiff was not entitled to seek imperfect partition in view of the bar encoded in Section 154(1)(e) of the Regulation, 1886.

p. The Trial Court while answering the issues nos. 5,6 and 7 respectively observed as under:

“Issue No 5:

26.This issue was framed to decide whether TS 67/79 was decreed in favour of the plaintiff. This is a matter of records and there is nothing to prove or disprove this fact. The Ld. Counsel of the parties have not made any submissions in this regard. It appears from the record that initially TS 67/79 was decreed in favour of the plaintiff. Then it went to the first appellate court. The case was again remanded back by the appellate court. In the subsequent occasion the suit was dismissed on the ground that the suit is bad for non-joinder of parties and that no proper identification of the land could be established by the plaintiff and hence no effective decree could be passed.

This issue is decided negatively.

Issue No 6 & 7:

27. This suit is basically for partition of the suit land and for issuance of precept. From the discussions made in issue No 4 it transpires that the plaintiff has failed to prove his entitlement for partition. As such these two issues are decided against the plaintiff.” q. In such circumstances referred to above, the plaintiff preferred Title Appeal No. 30 of 2011 before the Civil Judge, Nagaon which came to be allowed vide judgment and order dated 16.05.2014, holding that as in the first round of litigation declaration of joint possession had already been issued (vide order dated 20.04.1993 referred to above), plaintiff was entitled to recovery of exclusive Khas possession of his share of 01 kathas and 05 lechas by partition thereof. Furthermore, a direction was issued to the Trial Court to issue precept to the revenue authority to effect the partition. The operative part of the order passed by the First Appellate Court reads thus:-

“Appeal is allowed on contest. No cost. Judgment and decree passed by the learned Munsif No.2, Nagaon in TS 83/04 dated 16-07-2011 is set aside. Suit of the plaintiff is decreed. Plaintiff is entitled for partition of his share of 1 Katha 5 lechas of land in suit patta and recovery of possession of his share of purchased 1 katha 5 lechas of land and precept is to be issued to the revenue authority (collector) to cause the partition. Trial Court shall issue precept. Prepare decree accordingly.” r. The defendants being dissatisfied with the above filed Regular Second Appeal No. 243 of 2014 before the High Court seeking to challenge the judgment and order dated 16.05.2014 passed in TA No.30 of 2011 referred to above.

s. The High Court formulated two substantial questions of law for its consideration:

“A. Whether the plaintiff/respondent is entitled to get partition of the land being under Section 97 of Assam Land Revenue Regulation?

B. Whether the suit is barred under Section 154 of the Assam Land Revenue Regulation?” t. The High Court allowed the Second Appeal filed by the defendants and thereby quashed and set aside the Judgment and Decree passed by the First Appellate Court. The High Court held that the Section 154(1)(e) of the Regulation, 1886 bars the civil court from exercising its jurisdiction and further that the revenue court had rightly rejected the prayer of partition under Section 97 as whoever seeks partition of the land must be in possession of the land. The High Court while allowing the Second Appeal observed in Paras 12, 13, 14, 15 and 16 respectively as under:-

“12. There is no doubt that a civil court is empowered to decide the right of a person in respect of a property but section 154(1)(e) of the Regulation of 1886 states that no civil court shall exercise jurisdiction in case of claims of persons to imperfect partition, except in cases in which a perfect partition could not be claimed from, and being refused by the revenue authorities on the ground that the result of such partition would be to form a separate estate liable for an annual amount of revenue less than 5 rupees.

13. It is an admitted fact that the revenue authorities refused the prayer of partition made by Abdul Rejak Laskar. It was rejected on the ground that he did not have possession over the said 1.5 kathas of land. Under Section 97 of Regulation of 1886, whoever seeks partition of a land, he must be in possession of that land. It is also an admitted fact that Abdul Rejak Laskar is not in possession of that land and, therefore, the revenue authorities rightly rejected his prayer for partition.

14. Under the aforesaid premised reasons, the substantial questions of law are answered accordingly.

15. Now, this court is of the opinion that the learned civil judge erroneously reversed the judgment of the Civil Judge (Jr. Division No. 1), Nagaon. Therefore, judgment and decree dated 16.05.2014 passed by the Civil Judge, Nagaon, in Title Appeal No.30/2011 arising out of the judgment and

decree dated 16.07.2011 passed by the Munsif No. 2, Nagaon in Title Suit No. 83/2004 is set aside and quashed.

16. Further, the judgment and decree dated 16.07.2011 passed by the Munsif No.2, Nagaon in Title Suit No.83/2004 is affirmed.”

5. Being dissatisfied with the Judgment and order passed by the High Court, referred to above, the plaintiff is here before this Court with the present appeal.

B. SUBMISSIONS ON BEHALF OF THE APPELLANT /  
PLAINTIFF

6. The learned counsel appearing for the appellant would submit that Section 97 of the Regulation, 1886 provides that a suit for imperfect partition would be maintainable, inter alia, on two conditions stipulated therein being satisfied:

a. The person seeking partition is in actual possession of the property in respect of which he seeks partition, and;

b. Consent of the recorded co-sharers of land, holding in aggregate more than one-half of the estate.

7. He submitted that since both these conditions were absent in the case of the appellant herein, the Additional Deputy Commissioner, Nagaon held that the imperfect partition suit was not maintainable before the Revenue Authority. That being the position, the civil court would have jurisdiction to entertain the appellant's partition suit. He submitted that the jurisdiction of the civil court under Section 154(1)(e) will be barred only if an imperfect partition suit is otherwise maintainable under Section 97. In the facts of the present case, where the ingredients for invoking the remedy of imperfect partition under Section 97 are admittedly absent, the bar contained in Section 154(1)(e) would not apply. He submitted that any other interpretation of the said Regulation would render the appellant remediless in seeking partition, even after having a decree of right, title and possession in his favour.

8. The learned counsel further submitted that the Revenue Authorities are competent to carry out perfect/imperfect partition of an estate only if all the co-sharers give their consent for such amicable partition. However, if there is any dispute with regard to the title or possession raised by any of the co-sharers, the matter will be decided by the competent civil court having jurisdiction over the matter.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENTS /

DEFENDANTS

9. On the other hand, learned counsel appearing for the respondents submitted that no error not to speak of any error of law could be said to have been committed by the High Court in passing the impugned judgment and order.

He submitted that the claim of the appellant herein for imperfect partition is barred under Section 154(1)(e) of the Regulation, 1886 which categorically prohibits the civil courts from entertaining the claims for imperfect partition of revenue paying estates except in those cases where a perfect partition is refused by the revenue authorities under specific conditions.

10. He further submitted that the civil court have been conferred jurisdiction only on the fulfilment of the following conditions, namely:

- a. Where a perfect partition could not be claimed from the revenue authorities;
- b. The claim for perfect partition has been refused by the revenue authorities;
- c. The bar to the claim or the refusal of the revenue authorities is on the ground that the result of the partition would be to form a separate estate liable for an annual amount of revenue less than five rupees.

11. In the instant case, the claim for imperfect partition by the plaintiff was refused by the revenue authorities on 12.07.2004 on the ground of non- possession. Neither the claim was for perfect partition, nor the grounds for refusal were as mentioned in Sections 154(1) and 154(2) respectively of the Regulation, 1886.

12. In support of his aforesaid submissions, he relied on the judgment rendered by the Single Judge of the High Court in *Moimunnassa v. Faizur Rahman & Ors.* reported in (1987) 2 GLR 28 paras 4, 5 and 6 which unequivocally held that the partition of revenue-paying estates must be conducted by the Revenue Authorities under Section 54 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC").

13. The learned counsel also placed reliance on Section 4 of the CPC which provides that in the absence of any specific provision to the contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any law for the time being in force.

14. He submitted that Section 54 of the CPC mandates that the partition of an undivided estate assessed to revenue shall be conducted by the Collector or a designated revenue officer. The appellant in the present case had bypassed the established procedures by directly approaching the civil court instead of appealing the Additional District Commissioner's Order before the proper forum, i.e., the Assam Board of Revenue. This procedural violation is in direct conflict with the law already established in *Moimunnassa* (supra).

15. He submitted that instead of appealing to the Assam Board of Revenue or the Revenue Tribunal, the appellant filed yet another title suit knowing fully well that no effective decree of partition could have been passed because no proper identification of the land could be established by the appellant.

16. He submitted that the proper authority which can demarcate any land is the Revenue Authorities and not the civil court.

17. According to the learned counsel the judgment and decree dated 16.07.2011 passed by the Munsif No.2, Nagaon in Title Suit No. 83/2004 had rightly returned a finding upon examination of evidence that actual possession is a precondition to succeed in a claim for a partition and that the refusal by the revenue authority was for imperfect partition on the ground of non-possession and not for a claim of perfect partition or for the grounds mentioned in Section 154(1)(e) of the Regulation, 1886. Hence, there was no question of lifting the bar on the jurisdiction of civil courts.

18. He also submitted that the suit land is an estate within the meaning of Section 54 of CPC and the procedure prescribed therein is applicable in the present case.

19. As per Section 97 of the Regulation, 1886, certain pre-conditions are required to be fulfilled for a person claiming partition. From the lower Court records as recorded in the order dated 16.07.2011 in TS 83/2004 as well as the Final Judgment and Order dated 22.08.2022 in RSA No. 243 of 2014, it is evident the appellant did not meet these requirements, thereby rendering the claim for partition untenable.

#### D. ANALYSIS

20. The short point that falls for our consideration is whether the High Court committed any error in taking view that the suit filed by the appellant herein was barred under Section 154(1)(e) of the Regulation, 1886 referred to above.

21. Section 97 of the Regulation, 1886 reads thus:

“97. Persons entitled to partition.-(1) Every recorded of a permanently settled estate and every recorded landholder of a temporarily-settled estate may, if he is in actual possession of the interest, in respect of which he desires partition, claim perfect or imperfect partition of the estate :

Provided that-

(a) no person shall be entitled to apply for perfect partition if the result of such partition would be to form a separate estate, liable for an annual amount of revenue less than five rupees;

(b) no person shall be entitled to apply for imperfect partition of an estate unless with the consent of recorded co-sharers holding in the aggregate more than one half of the



estate;

(c) a person may claim partition only in so far as the partition can be effected in accordance with the provisions of this chapter.

(2) When two or more proprietors land-holders would be entitled under sub-Section (1) to partition in respect of their respective interests in the estate, they may jointly claim partition in respect of the aggregate of their interests.”

22. Section 154(1)(e) of the Regulation, 1886 reads thus:

“154. Matters exempted from cognizance of Civil Court.-(1) Except when otherwise expressly provided in this Regulation, or in rules issued under this Regulation, no Civil Court shall exercise jurisdiction in any of the following-

xxx xxx xxx

(e) claims of persons to imperfect partition, except in cases in which a perfect partition could not be claimed from, and been refused by, the revenue authorities on the ground that the result of such partition would be to form a separate estate liable for an annual amount of revenue less than five rupees.” i. What is Partition?

23. Partition is either perfect or imperfect. Perfect partition means division of a revenue paying estate into two or more such estates each separately liable for revenue assessed thereon. Imperfect partition means the division of a revenue paying estate into two or more portions jointly liable for the revenue assessed thereon entire estate.

24. Chapter VI of the Regulation, 1886 deals with the procedure for carrying out “perfect partition” and “imperfect partition” of a revenue paying estate on the basis of an application made before the Deputy Commissioner. Section 100 of the Regulation, 1886, however, provides that when there is objection as regards the question of title, the Deputy Commissioner will stay his hand in the matter and such objection would be determined by a civil court of competent jurisdiction.

25. Section 100 of the Regulation, 1886 is quoted hereinbelow:

“100. Objection on question of title.— (1) If an objection, preferred as required under section 99 raises any question of title which has not been already determined by a Court of competent jurisdiction, the Deputy Commissioner shall stay his proceedings for such time as, in his opinion, is sufficient to admit of a suit being instituted in the civil court to try the objection.

(2) A Deputy Commissioner staying his proceedings under this section shall make an order requiring the objector, or, if for any reasons he deems it more equitable, the applicant, to institute such a suit within the time fixed, and, in the event of such a suit

not being instituted within that time, may in his discretion, disallow the objection, or dismiss the application, as the case maybe.

(3) On a suit being instituted to try any objection under this section, the Deputy Commissioner shall with reference to the objection, be guided by the orders passed by the Civil Court in the suit.”

26.Further, instruction No. 29 of the Part-III of the Executive Instructions framed under the provisions of Assam Land Revenue Reassessment Act, 1936 clearly indicates that the partition of ejmali patta can be carried out by the revenue authorities provided all the shareholders agree and give their consent in writing by putting their signatures in the chitha or otherwise. The said provision is quoted hereinbelow:

“29. If the shareholders of an ejmali patta wish to partition amicably their land according to possession and point out the new boundaries, the recorder will survey the boundaries as pointed out, provided all of them agree and give their consent in writing by putting their signatures in the chitha or otherwise. If any co-sharer objects, or if there be dispute about possession, the recorder will not effect the partition.”

27.A bare reading of the provisions contained in Chapter VI of the Regulation, 1886 read with the Rules framed and the Executive Instructions issued under the Assam Land Revenue Re-assessment Act, 1936, leaves no manner of doubt that the Revenue authorities would be competent to carry out perfect/imperfect partition of a revenue paying estate if and only if all the co-sharers give their consent for such amicable partition, i.e., when the application for such partition is made on mutual consent of the parties. However, if there is any dispute as regards the title or possession raised by any of the co-sharers, the Deputy Commissioner has to stay his hands on such process of partition and leave the matter to be decided by a competent civil court having jurisdiction over the matter. The said position also becomes amply evident from the language employed in Order XX Rule 18 read with Section 54 of the CPC.

28.When a suit for partition is instituted seeking declaration of share and separate possession by a co-sharer based on contesting claim of title, the Revenue authorities cannot proceed to decide such a question as per the scheme of the Regulation, 1886. However, the High Court under a serious misconception of law appears to have taken a contrary view in the matter by holding that it is the civil court which would have no jurisdiction to try the suit once an application for partition is entertained by the revenue authorities concerning the subject-matter of the suit.

29.Section 9 of the Civil Procedure Code, 1908 provides that whenever a question arises before the civil court whether its jurisdiction is excluded expressly or by necessary implication, the Court naturally feels inclined to consider whether the remedy afforded by an alternative provision prescribed by any special statute is sufficient or adequate. In cases where exclusion of the civil court's jurisdiction is expressly provided for, the consideration as to the scheme of the statute in question and the adequacy or sufficiency of the remedy provided for by it may be relevant but cannot be decisive. Where exclusion is pleaded as a matter of necessary implication such

consideration would be very important and in conceivable circumstances might become even decisive.

30. In *Dhulabhai & Ors. v. State of M.P. & Anr.* reported in (1968) 3 SCR 662, a Constitution Bench reviewed the entire case law on the question of maintainability of civil suit and laid down seven propositions. Propositions 1 and 2 are relevant, which read thus:

"(1) Where the statute gives a finality to the orders of the special tribunals the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not."

31. In *Secretary of State, Represented by the Collector of South Arcot v. Mask & Company*, reported in AIR 1940 Privy Council 105, their Lordships of the Privy Council with regard to the jurisdiction of the civil courts to entertain a suit observed as under:

"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial proceeding."

32. The learned counsel appearing for the respondents invited our attention to three provisions of the CPC. First, Section 4, secondly, Section 54 and thirdly, Order XX Rule 18 of the CPC.

33. Section 4 of the CPC reads thus:

"Section 4. Savings.-

(1) In the absence of any specific provision to the Contrary, nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force.

(2) In particular and without prejudice to the generality of the proposition contained in sub-section (1), nothing in this Code shall be deemed to limit or otherwise affect any remedy which a landholder or landlord may have under any law for the time being in force for the recovery of rent of agricultural land from the produce of such land.”

34.The plain reading of the provision referred to above would indicate that when anything in the CPC is in conflict with anything in the special or local law or with any special jurisdiction or power conferred or in the special form of procedure prescribed by or under any other law, the Code will not (in the absence of any specific provision to the contrary) prevail so as to override such inconsistent provisions. When there is no conflict between the special or local law and the Code, the Code will apply.

35.Section 54 of the CPC reads thus:

“Section 54. Partition of estate or separation of share.-

Where the decree is for the partition of an undivided estate assessed to the payment of revenue to the Government, or for the separate possession of a share of such an estate, the partition of the estate or the separation of the share shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or the separate possession of shares, of such estates.”

36.The plain reading of the above referred provision would indicate that the same deals with a case in which a civil court can pass a decree but cannot itself execute it. The execution has to be effected by the Collector. Civil courts have under this Section, jurisdiction to try and decide suits for partition or separate possession of share of estates assessed to payment of revenue to Government but have no power to execute decree passed in such suits. The decree that may be passed by the civil court would declare the rights of the several parties interested in the property, but the decree should direct the actual partition to be made by the Collector or any officer subordinate to him authorized on that behalf.

ii. Order XX Rule 18 of the CPC

37.Order XX Rule 18 of the CPC reads thus:

“18. Decree in suit for partition of property or separate possession of a share therein.- Where the Court passes a decree for the partition of property or for the separate possession of a share therein,

then,-

(1) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties interested in the property, but shall direct such partition or separation to be made by the Collector, or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with such declaration and with the provisions of section 54;

(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the right of the several parties interested in the property and giving such further directions as may be required.”

38.The aforesaid rule allows the court to determine the rights of parties with respect to land in the civil court and to pass a preliminary decree, decree in the rights of several parties interested in the property. When actual partition is to be effected, in pursuance of the declaration of the rights of the parties in land, the civil court has to refer the matter to the Collector or any officer subordinate to him authorized to act on behalf of the Collector.

39.Sub-rule (1) refers to partition decrees relating to a “estate assessed to Government revenue” referred to in Section 54 of the Code, while sub-rule (2) deals with partition decrees relating to any other immovable property or movable property.

40.In a suit for partition, the court may issue three types of decrees to put the issue to rest: preliminary decree, composite decree (partly preliminary & partly final), and final decree. The purpose of a suit for partition or separation of a share is twofold:

a. First, declaration of plaintiff's share in the suit properties under the preliminary decree, and;

b. Secondly, division of his share by metes and bounds which would take place under the final decree.

41.In a given case, the property may be put to sale and the proceeds would be shared among the shareholders which can be termed a final decree. In a partition suit, if the court is unable to make a division of property by metes and bounds forthright without further inquiry, the court will initially pass a preliminary decree. A preliminary decree for partition identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. The prayer relating to actual division by metes and bounds and allotment is left for being completed under the final decree proceedings.

42. In regard to immovable properties (other than agricultural lands paying land revenue) - such as buildings, plots etc. or movable properties - where the court can conveniently and without further enquiry make the division without the assistance of any Commissioner, or where parties agree upon the manner of division, the court will pass a composite decree comprising the preliminary decree declaring the rights of several parties and also a final decree dividing the suit properties by metes and bounds, in one judgment.

The composite decree is partly preliminary and partly final. The decree declares the proportion of shares and divides the property, thereby settling the partition to rest in one go.

43. Order XX Rule 18 CPC deals with decree in a suit for partition of property or separate possession of a share therein. There are two decrees in a suit for partition; a preliminary decree and a final decree. A preliminary decree determines and declares the rights of parties and shares of all eligible claimants, final decree carries out and effects partition by metes and bounds of the property on the basis of preliminary decree. If an estate is assessed to payment of revenue to the Government, Collector or his nominee will effect partition. In other cases, however, Commissioner will effect such partition.

44. This Court in *Shankar Balwant Lokhande (Dead) by LRs. v. Chandrakant Shankar Lokhande & Anr.* reported in AIR 1995 SC 1211, held that where a decree relates to any immovable property and the partition or separation cannot conveniently be effected without further inquiry, then the court should pass a preliminary decree declaring the rights of parties having interest in the property. The court is also empowered to give such directions as may be required. A preliminary decree in a partition suit is a step in the suit which continues until the final decree is passed.

45. This Court in *Venkata Reddy & Ors. v. Pethi Reddy* reported in AIR 1963 SC 992 held thus:

“... A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making of two decrees, a preliminary decree and a final decree, the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable. The legislature in its wisdom has thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made, the decision of the court arrived at the earlier stage also has a finality attached to it. ...”

46. The character of decree passed under sub rules (1) and (2) of Order XX Rule 18 of the CPC is the same. It is true that the decree passed under sub rule (1) of Rule 18 is not described as preliminary and the decree under sub-rule (2) is declared as preliminary, there is no real difference between the two inasmuch as under both the provisions, the court determines and declares the rights of parties and under both the sub rules, partition, separation or division by metes and bounds has to be

effected thereafter. Whereas, under sub rule (1), Collector effects partition, under sub rule (2), it is Commissioner appointed by the court who undertakes the said exercise.

47. In regard to estates assessed to payment of revenue to the government (agricultural land), the court is required to pass only one decree declaring the rights of several parties interested in the suit property with a direction to the Collector (or his subordinate) to effect actual partition or separation in accordance with the declaration made by the court in regard to the shares of various parties and deliver the respective portions to them, in accordance with Section 54 of CPC. If the Collector takes action in the decree appropriately, the matter will not come back to the court and the court will not have to interfere in the partition, except attending any complaint of an affected third party. While making the partition the Collector is bound by declaration of the rights of the parties in the preliminary decree. But the Court has no power to fetter the discretion of the Collector conferred under the law. However, in regard to any issue on which the Collector is not competent to decide, the civil court will have the power to dispose of. If the Collector disregards the terms of the decree, the Court is entitled to refer the case back to the Collector to re-partition the property. The Collector must actually divide the estate in the manner he thinks best keeping in mind the nature of the land as revenue paying entity and the stipulations of the decree. The object of this provision is two-fold:

- a. First, the revenue authorities are more conversant and better equipped to deal with such matters than a civil court, and;
- b. Secondly, the interest of the government in regard to the revenue paying estate would be better safeguarded by the Collector than by the civil court.

48. A preliminary decree is a stage where the rights of the parties are worked out which are then to be finally adjudicated by passing of a final decree. This Court in Venkata Reddy (supra) explained the concept of “preliminary decree” and “final decree” in detail and observed thus:

“... A decision is said to be final when so far as the court rendering it is concerned, it is unalterable except by resort to such provisions of the code of Civil Procedure as permit its reversal, modification or amendment. Similarly, a final decision would mean a decision which would operate as res judicata between the parties if it is not sought to be modified or reversed by preferring an appeal or a revision or a review application as is permitted by the Code. A preliminary decree passed, whether it is in a mortgage suit or a partition suit, is not a tentative decree but must, in so far as the matters dealt with by it are concerned, be regarded as conclusive. No doubt, in suits which contemplate the making of two decrees, a preliminary decree and a final decree, the decree which would be executable would be the final decree. But the finality of a decree or a decision does not necessarily depend upon its being executable. The legislature in its wisdom has thought that suits of certain types should be decided in stages and though the suit in such cases can be regarded as fully and completely decided only after a final decree is made, the decision of the court arrived at the earlier stage also has a finality attached to it. It would be relevant to refer to Section 97 of the Code of Civil Procedure which provides that where a party

aggrieved by a preliminary decree does not appeal from it, he is precluded from disputing its correctness in any appeal which may be preferred from the final decree. This provision thus clearly indicates that as to the matters covered by it, a preliminary decree is regarded as embodying the final decision of the court passing that decree.” (Emphasis supplied)

49. A final decree is one which completely disposes of the suit and finally settles all the questions in controversy between the parties and nothing further remains to be decided thereafter. A preliminary decree in a partition suit merely determines and declares the rights of the parties in the properties and the extent to which they are entitled. It is the final decree which ultimately divides the properties by metes and bounds and awards separate possession of the properties to the claimants. The function of the final decree is to restate and apply what the preliminary decree has ordered. A final decree is thus based upon and controlled by preliminary decree. It is settled legal position that final decree proceedings are in continuation of preliminary decree proceedings and there is no executable decree unless the final decree is passed. The final decree does not originate itself, but flows from preliminary decree already passed in a suit determining and declaring the rights and interests of the parties in the suit. The final decree is not a decree in execution of preliminary decree but decree in a suit. It is the final decree which is to be enforced.

50. The Privy Council in *Guran Ditta L. v. T.R. Ditta* reported in AIR 1935 PC 12 observed that a final decree neither relates to any substantive rights of the parties nor decides or declares title to the property or shares of the parties to the partition suit and till the final decree is passed, there is no executable decree as envisaged by Order XX Rule 18 of CPC. This Court in *Muthangi Ayyana v. Muthangi Jaggarao & Ors.* reported in (1977) 1 SCC 241 held that a final decree cannot go behind, amend or alter the preliminary decree.

51. In the aforesaid context, we looked into one very lucid decision of the High Court of Karnataka in the case of *Ramagouda Rudregouda Patil v. Lagmavva* reported in 1984 SCC Online Kar 192 explaining the true purport and scope of Section 54 of the CPC read with Order XX Rule 18 of the CPC. We may quote the relevant observations:

“7. It is now a well settled principle of law that in the case of the execution of the decrees pertaining to partition and separate possession of agricultural lands assessed to Revenue, the Civil Court only declares the shares of the parties and the authority concerned has to effect partition or division by metes and bounds, as envisaged by Section 54 of C.P.C. Collector is the authority concerned to effect partition. Once the papers were sent to the collector, the Civil Court has no control over the proceedings taken by the Collector. The Civil Court cannot direct the Collector to effect partition in a particular manner after the papers were sent to him. Therefore, Section 54 C.P.C. makes it absolutely clear that the execution is not at all contemplated in the case of decrees for partition and division of agricultural lands. What the Civil Court has to do is to transmit the papers to the Collector for actual partition and possession. Therefore, all Execution Petitions are to be filed in the Civil Courts requesting the Court to transmit the papers to the Collector for partition and possession of



agricultural lands. They are not, in any sense of the term, execution petitions. They are only in the form of a request to the Court to do its duty as enjoined on it by Section 54 C.P.C.

Therefore, the lower Appellate Court rightly held that the execution petitions filed in such cases are only requests or reminders to the Court to send the papers to the Collector to effect the partition.

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10. Under Section 54 and Order 20 Rule 18 C.P.C. the only duty of the Collector, now called as the Deputy Commissioner, is to effect partition or division by metes and bounds in accordance with law if any for the time being in force, relating to partition or separate possession of shares of such estate. The word 'partition' used in Section 54 or Order 20 Rule 18, in my opinion, means that the partition is not confined to mere division of the lands concerned into the requisite parts, but also includes the delivery of shares to the respective allottees. To elaborate further, the word 'partition' means actual division or partition by metes and bounds and handing over possession of the shares to the parties.

11. As an instance of law relating to partition one will have to refer to the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act and the Land Revenue Act and the Rules. If the Collector thinks that actual division by metes and bounds is not possible on account of the provisions of the Prevention of Fragmentation and Consolidation of Holdings Act, he will have to follow the procedure laid down by the Act in such cases. In fact the Prevention of Fragmentation and Consolidation of Holdings Act, lays down procedure in such cases. Therefore, this is the law within the meaning of Section 54 C.P.C. relating to partition or separate possession of shares. The law relating to partition in Section 54 or Order 20 Rule 18 C.P.C.

does not refer to the nature of the property to be divided. Therefore, Section 54 C.P.C., in my opinion, does not enable the Deputy Commissioner, to decide the question as to whether the agricultural land in question is impartible or partible. That is the duty of the Civil Court and not of the Deputy Commissioner.

12. This Court, in the decision in Ramachandra Srinivasa Kulkarni v. Ramakrishna Krishna Kulkarni [1967 (1) Mys. L.J.

97.] has clearly stated:

“But the order made by the Collector in the case before us concerned itself with an objection to the partition which was directed by the Civil Court. That objection has been raised before the Executing Court and had been over-ruled. An appeal from that

order had also been dismissed. All that the Collector had, therefore, to do was to proceed to make a partition and, it was entirely beyond his competence when making a partition under Section 57 of the Code of Civil Procedure, to listen to an objection which had been repelled by the Civil Court which had the competence to adjudicate upon it.” Hence, it is clear that it is not within the jurisdiction of the Deputy Commissioner to consider the question as to whether the lands are partible or impartible. That is the sole and exclusive jurisdiction of the Civil Courts. The nature of the property viz. whether it is partible or impartible, is not covered by the phrase ‘the law for the time being in force, relating to partition’ as occurring in Section 54 C.P.C. Therefore, the order passed by the Collector in the previous execution that the lands being sanadi lands could not be partitioned, is also without jurisdiction. It is a nullity in the eye of law. There is no necessity to go in revision or appeal against such an order. That is also the view taken by this Court in Ramachandra's case [1967 (1) Mys. L.J. 97.]. Therefore, the argument of Learned Counsel Sri Ujjannavar that the order of the Collector in the previous execution having not been challenged, barred the present execution petition, cannot be accepted at all.

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15. Sri Ujjannavar then urged that a decree passed in a partition suit was not a preliminary decree and it amounts to saying that the decree has become final. It is no doubt true that it has been held by this Court in the decision in Ganapatrao Raojirao Desai v. Balvant Krishnaji Desai [1965 (2) Mys. L.J. 768.] that:

“A decree passed under R. 18(1) of Or. XX directing partition by the Collector cannot be said to be a preliminary decree. So far as the Civil Courts are concerned it is final for all purposes, though the partition of the property may remain to be effected by the Collector. Sub-rule (1) of Rule 18 does not contemplate any application to be filed by the parties for sending the papers to the Collector.” The purport of the said expression used by this Court is that though it cannot be said to be a preliminary decree, it became final for all purposes so far as the Civil Courts are concerned. Once a decree declaring the shares of the parties is passed by the Civil Court, it has nothing more to do. It means that the case has come to an end in the Civil Court and it does not amount a final decree. Therefore, it cannot be considered to be a final decree as understood in the Civil Procedure Code Therefore, the argument of Learned Counsel Sri Ujjannavar that in the case of a final decree the limitation would begin to run, holds no substance and it is rejected.” (Emphasis supplied) iii. When does Section 154(1)(e) bar the jurisdiction of civil courts?

52. The learned counsel appearing for the appellant is right in his submission that the jurisdiction of the civil court under Section 154(1)(e) would be barred only if an imperfect partition suit is otherwise maintainable under Section 97. He is right in his submission that to maintain a suit for imperfect partition under Section 97, the appellant has to fulfill two conditions stipulated therein.

a. First, the person seeking partition should be in actual possession of the property in respect of which he seeks partition, and; b. Secondly, the co-sharers may not be ready and willing to give their consent and if the person seeking partition is not in actual possession then no other remedy is available to him except to go before the civil court and seek partition on the basis of his own title as a co-owner.

53. A reference in this connection may be made to a decision of the Calcutta High Court in *Musstt. Rukeya Banu & Ors. v. Musstt. Nazira Banu & Ors.* reported in AIR 1928 Cal 130, where it was pointed out that a partition, whether perfect or imperfect, of revenue-paying properties must be made by the Revenue authorities. This follows from a conjoint reading of Sections 96 and 154(1)(e) of the Regulation, 1886 respectively. However, the jurisdiction of the civil court to determine the right of the parties to the property in dispute as well as shares to which they are entitled has not been taken away by the Regulation in question, and it is for the civil court to decide whether the property is or is not liable to partition. The same view applies to other clauses of Section 154. The parties to a suit are entitled to obtain a declaration from the civil court that they have got the right to obtain from the revenue authorities a separation and allotment of their shares in the estate according to their proportionate rights. It is the civil court which will decide whether the plaintiff is entitled to seek partition and to what extent. If it is found by the court that revenue paying properties have to be partitioned among the parties, the court may declare the share of each of the parties and leave them to go to the revenue authorities for making the necessary performance. The relevant observations from the said decision are reproduced hereinbelow:

“Lastly, the question of jurisdiction under the Assam Land Revenue Regulation may be dealt with. It is quite true that under sec. 154(1)(e) read with sec. 96 of the Act, partition, whether perfect or imperfect, of revenue-paying properties must be made by the revenue authorities. But the jurisdiction of the Civil Court to determine the rights of the parties to the property in dispute as well as the shares to which they are entitled have not been taken away by the regulation in question and the Civil Court must also decide whether the property is liable to partition or not; as in this case, whether there is a valid wakf which prevents the parties from seeking a partition of the property. The Plaintiff as well as the appealing Defendants are entitled to obtain a declaration from the Civil Court that they have got the right to obtain from the revenue authorities a separation and allotment of their shares in the estate according to their proportionate rights. It is further pointed out by the Appellants that all the properties in suit are not revenue-paying properties. These must be partitioned by the Civil Court. It is also alleged that the parties are in possession of separate parcels of lands being only shares in certain revenue-paying estates. These do not fall within the provisions of the Assam Regulation. The moveable properties should also be partitioned and the Court should also give an opportunity to the Plaintiff for finding out whether there are any other properties which are capable of being partitioned. The actual partition of revenue-paying estates must necessarily be made according to the provisions of the Assam Land Revenue Regulation.” (Emphasis supplied)

54. The position of law on the issue has been explained by the High Court of Gauhati itself in the case of Thanda Bala Choudhury and Anr. v. Birendra Kumar Choudhury reported in 2002 SCC OnLine Gau 26 wherein the issue was regarding the jurisdiction of civil courts for declaration of right, title and interest over the suit property when the case for perfect partition had already been disposed of by the Deputy Commissioner. The Court therein while elaborating on of the Regulation, 1886, held the following:

a. First, in cases where the distribution of land has been decided by way of partition, civil courts have the jurisdiction to adjudicate upon the title to the land. This is in consonance with various rulings that conclude that Section 154 cannot deprive a man of his title to the land. The Court held that mere partition of property in dispute by the Revenue authorities does not confer any title on them and it is open to civil courts to determine the right of the parties to the property.

b. Secondly, civil courts cannot exercise jurisdiction over matters of perfect partition; only revenue courts are vested with the power to decide on the same. The legal position pursuant to Section 154 as well as Section 62 is that no bar exists over civil courts to declare the rights over a suit property. Additionally, Section 62 specifically vests a right upon parties to approach civil courts for declaration of right, title and interest over the suit property. The relevant paragraphs from the said decision are reproduced hereinbelow:

“7. A catena of judicial decisions has been referred by Mr. Katakey to drive home his submission. In Dandiram Nath and v. Mihiram Nath Chamua decided on 13.11.1953 reported in 1 Unreported cases (Assam) 255 this Court speaking through Justice Sarjoo Prasad, C.J, categorically ruled that Section 154 cannot deprive a man of his title to the land. The mere fact that the lands have been distributed or revenue allotted will not confer any title on them and it would be always to the Civil Court to adjudicate upon the question of title irrespective of the provisions of Section 154. Dealing with a case where the Plaintiffs instituted suit for declaration of title and confirmation of possession or in the alternative recovery of possession, the Court in paragraph-3 of the said ruling observed as follows:-

"3. On behalf of the appellants, however, it has been argued that Section 154(1)(f) of the Assam Land and Revenue Regulation is a bar to the institution of the suit. Section 154 says that except where otherwise expressly provided in this Regulation or in Rules framed thereunder, no Civil Court shall exercise jurisdiction in any of the matters enumerated in the various clauses of the section, one of them being Clause (f) which relates to the distribution of land or the allotment of the revenue on partition. The distribution of land or the allotment of the revenue may very well stand, but I do not see how Section 154 can deprive a man of his title to the land. If the defendants had no title thereto, then the mere fact that the lands have been distributed or revenue allotted, will not confer any title on them, and it would be always open to the Civil Court to adjudicate upon the question of title irrespective of the provisions of

Section 154. A reference in this connection may be made to a decision of the Calcutta High Court in "Mt. Rukeya Banu and Ors.

v. Mt. Nazira Banu and Ors. (1928 Cal. 130) where it was pointed out that a partition, whether perfect or imperfect, of revenue-paying properties must be made by the Revenue authorities. This follows from a perusal of Section 96 with Section 154(1)(e) of the Assam Land and Revenue Regulation. But the jurisdiction of the Civil Court to determine the right of the parties to the property in dispute as well as shares to which they are entitled has not been taken away by the Regulation in question, and it is for the Civil Court to decide whether the property is or is not liable to partition. The same view applies to other clauses of Section 154. In the circumstances, I find no substance in the point urged by the learned counsel for the appellant. In my opinion, the appeal is without any merit and must be dismissed with costs and the decision of the Court of Appeal below should be maintained."

8. In the case of "The State of Assam v. Sifat Ali and Ors." reported in AIR 1967 Assam & Nagaland Page-3, a Division Bench of this Court also held that Section 154(1)(a) of the Regulation does not debar the civil court from entertaining the suit based on title to property.

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19. Keeping in view the above cited authorities relating to the jurisdiction of Civil Court under Section 154 of the Regulation and also on ordinary reading of the provisions of Section 154 as well as Section 62 which is also a saving clause as noted above, it can be safely said that the legal position is well settled that Civil Court has the jurisdiction to agitate upon the matter relating to title over the property. It is correct that if any claim is made as regards perfect partition, no Civil Court shall exercise its jurisdiction as envisaged under Section 154(1)(d) of the Regulation. Section 154 of the Regulation provides that except where otherwise expressly provided in this Regulation or in Rule framed thereunder, no civil court shall exercise the jurisdiction in any matter mentioned in the various clauses under the Section including Clause (d) which relates to claim of person to perfect partition. Revenue Court has been vested with the power to effect the partition whether perfect or imperfect, of the revenue paying properties. But at the same time, jurisdiction of the Civil Court to determine the right of the parties to the properties in dispute as well as the shares of which they are entitled to has not been taken away by the Regulation. In the instant case though the matter was earlier agitated before the Revenue Court for effecting perfect partition, the Petitioners, having failed to get adequate relief, approached the Civil Court by filing suit in question for declaration of right, title and interest over the suit land. In such premises I do not find any reason how this Section 154 can debar the Petitioners claiming to the title of the land in question from approaching the Civil Court. Section 62 also clearly vests a right upon the person to prefer a suit to the Civil Court for declaration of his right to any property. Therefore, I find sufficient force in the submission of the learned counsel for the Petitioner and accordingly, I am disinclined to approve the views expressed by the learned Civil Judge in the Impugned orders, I am of the considered view that the Civil Court is the absolute authority to adjudicate a dispute relating to the title and interest over the immovable property." (Emphasis supplied)

55.The position of law with respect to the jurisdiction of civil courts to try suits based on title to property has also been explained by the Gauhati High Court in the decision rendered in the case of Ka Trily Tariang v. U. Resdrikson Lyngdoh and Ors. reported in (1984) 2 G.L.R. 8. The High Court inter alia observed that the jurisdiction conferred upon Revenue authority does not prevent the civil court from adjudicating upon the right to an asset when entitlement is claimed. The relevant observations are reproduced hereinbelow:

“[...] In that case as well, the Commissioner acting under Rule 26 of the Settlement Rules had pass an order but the Plaintiffs sued the State of Assam claiming his title to the property. The plea of bar under Section 154(1)(a) was taken. Their Lordships held that the provision did not preclude the civil court to entertain suits based on title to the property. Declaration of title to immovable property is out of bound for the Revenue court.

It can determine many controversies including those covered by clauses (a) to (m) of Section 154(1) of the Regulation but the civil court is the court competent to decide right, title and interest to immovable property. A civil court cannot only declare title to the property but it can also adjudicate that the Revenue Officer or the courts acted beyond their jurisdiction resulting in a failure of justice. In Dinesh Chandra Sarkar v. Harendra Biswas AIR 1972 Gau. 81, this Court has held that suit for declaration of right, title and interest is not barred by Section 154(1) of the Regulation. Dealing with the provisions of Section 154 of the Assam Land and Revenue Regulation it was held that the matters within the jurisdiction of the Revenue authorities or courts could be decided by them but no such decision of a revenue court could take away the jurisdiction of a civil courts, when a person having a right to an asset claimed entitlement to it and sought declaration of his right in the civil court notwithstanding the provisions contained in Section 154(1)(a) of the Regulation.” (Emphasis supplied)

56.Further, in the decisions rendered in the Daulatram Lakhani v. State of Assam and Ors. reported in 1989 (1) G.L.J. 37 and Gauri Shankar Agarwalla v. Madanlal Agarwalla and Ors. reported in 2010 SCC OnLine Gau 465, the High Court of Gauhati itself has clarified that the bar created by Section 154(1) does not preclude suits based on title to the property from being within the jurisdiction of civil courts.

## E. CONCLUSION

57.In view of the aforesaid, the appeal succeeds and is hereby allowed. The impugned judgment of the High Court is accordingly set aside for not being sustainable in law.

58.As a result, the order dated 16.05.2014 passed by the Civil Judge, Nagaon is hereby restored.

59.Pending application(s), if any, stand disposed of.

.....J. (J.B. Pardiwala) .....J. (R. Mahadevan) NEW DELHI;

20th DECEMBER, 2024.