

## **Raja Ram vs Bishnath Prasad And Ors. on 14 September, 1950**

**Equivalent citations: AIR1951ALL432, AIR 1951 ALLAHABAD 432**

### **JUDGMENT**

1. Raja Ram, appellant, and his brother, Gaya Prasad, respondent 7 instituted a suit against the other respondents for partition of property belonging to the family. They obtained a preliminary decree for partition. In that suit the title and joint possession of the appellant was admitted. Subsequently, they applied several times to the civil Court for possession in pursuance of that preliminary decree, but that possession was refused, finally on 22-8-1933.

2. Raja Ram then took proceedings in the revenue Court. He applied first for mutation of names but his application was dismissed on 28-2-1934. He subsequently made another application also for mutation of names, but that too was dismissed and so was his appeal against the order of the Sub-Divisional Officer.

8. On 9-6-1936, he applied for partition of the revenue-paying property in the Revenue Court but that application was also dismissed. Finally he made an application for correction of papers which was dismissed on 18-10-1943, on an objection filed by the respondents 1 to 7. Thereafter the suit out of which this appeal arises was instituted on 2-3-1944, for joint possession over the property mentioned in list A attached to the plaint. It was pleaded that the cause of action was the dismissal of the application for correction of papers on 18-10-1943, and the objections of the defendants to the application for correction of papers.

4. When the case came up for hearing both the parties stated before the Court that the possession of the plaintiff had continued throughout in the same manner as it existed at the time of the preliminary decree for partition. On the basis of this admission, both the Courts have held that there was no cause of action for the suit since there had been no invasion of the rights of the plaintiff after the date of the decree for partition. The suit was accordingly dismissed. The plaintiff has now come up in second appeal and we have heard the learned counsel for the parties.

5. From a recital of the facts of the case as given by us it is clear that the appellant made three separate attempts of three different kinds in the revenue Court to have his rights vindicated. In each of those attempts he failed and there is no other procedure to which he can have recourse in the revenue Court in order to obtain actual possession of the property of which he has been held to be a co-sharer.

6. The law as understood by the lower appellate Court with regard to what is to be done after a preliminary decree has been passed for partition of land revenue paying property is not correct, and what follows upon a decree by the civil Court for partition of land revenue paying property has been clearly specified in *Abdul Ali v. Vigar Ali Beg*, 1947 O. W. N. 595 : (A.I.R. (36) 1949 Oudh 37). In that case it has been laid down that proceedings for actual partition of revenue paying property are independent of the decree passed by the civil Court and that these must take place in accordance

with the law as laid down in the Land Revenue Act. It is also made clear, as indeed Section 107, Land Revenue Act, states specifically, that an application for partition can only be made by a recorded co-sharer. Until therefore the plaintiff could obtain an entry of his name in the revenue papers, he could, in spite of the decree in his favour, not have the rights to get a revenue paying mohal partitioned.

7. This was not a case for mutation because the plaintiff has not obtained possession by succession or transfer by virtue of the preliminary decree for partition. In fact that decree was not a decree for possession at all because his possession at the date of the suit was admitted and only a decree for partition was passed.

8. The prayer made in a subsequent application for partition also could not be entertained in view of the provisions of Section 107, Land Revenue Act, to which we have referred. That also, therefore, did not really necessitate any action by the plaintiff.

9. When, however, the correction of papers was refused, which meant that the plaintiff could not be entered in the revenue records as a co-sharer, he was deprived of his right to claim partition of the property and he was thus deprived of the right to obtain or remain in possession of that property. That action of the Court, therefore, gave the plaintiff a cause of action to institute the suit out of which this appeal arises. The decision of the lower Courts that there was no cause of action for the suit is not correct. This being so, this appeal must be allowed. Since, however, both the Courts below have in fact disposed of the case on this preliminary point, the judgments and decrees of both the Courts must be set aside and the case remanded to the trial Court for trial de novo. We accordingly allow this appeal, set aside the decrees of both the Courts below and remand the case for trial de novo. The costs of all the Courts will abide the result.