REVISIONAL CIVIL

Before Kapur, J.

RAMESHWAR NATH,—*Petitioner*

versus

JAGESHWAR NATH AND OTHERS,—*Respondents*

Civil Revision No. 334 of 1952

1953

June, 11th

Code of Civil Procedure (Act V of 1908)—Section 54—"Estate assessed to the payment of revenue to the Government"—Meaning of—Punjab Land Revenue Act (XVII of 1887)—Provisions of—Whether exclude the jurisdiction of Civil Courts to partition lands on which houses, shops and factories have been built—Practice—Parties agreeing to partition by court through commissioner—Whether can thereafter raise objection to the jurisdiction of Court to partition those properties.

The plaintiffs brought a suit for possession by partition of the properties held by the joint Hindu family. One of the properties was a share in agricultural land and another was cotton factory, shops and *Ghair Mumkin* land on which houses had been built. The parties agreed to have all the properties except agricultural land partitioned by a Commissioner appointed by the court. The Commissioner made his report to which the defendants objected that he could not partition "revenue paying estate". It was conceded by the parties that buildings had been erected upon the "revenue paying estate" objected to. The question arose whether Civil Court had jurisdiction to partition such property.

Held, that (1) the words "estate assessed to the payment of revenue to Government" in section 54, Civil Procedure Code, do not cover land which have been built upon and have become houses or factories;

(2) the Punjab Land Revenue Act does not exclude the jurisdiction of Civil Courts in regard to the lands on which houses, shops and factories have been built; and

(3) that it was not open to the defendants to raise the objection as to the jurisdiction of the Civil Courts because they had agreed that this was not an estate assessed to revenue payable to the Government within the meaning of section 54, Civil Procedure Code, where by the consent of the parties only those properties were excluded from partition by the Commissioner which were agricultural lands and the rest were specifically agreed to be partitioned by the Commissioner.

Petition under section 115 of Act V of 1908, for revision of the order of Shri Pitam Singh Jain, Senior Sub-Judge, Ambala, holding that the appointment of a Local Commissioner to partition the property in dispute was "not warranted by law" in regard to revenue paying estate.

H. L. SARIN and KUNDAN LAL, for Petitioner.

TEK CHAND and LAKHMI CHAND, for Respondents.

JUDGMENT

Kapur, J.

KAPUR, J. This is a rule directed against an order passed by Mr. Pitam Singh Jain, Senior Subordinate Judge, Ambala, dated the 20th of August 1952, holding that the appointment of a local commissioner to partition the property in dispute was "not warranted by law" in regard to revenue paying estate.

The decision as it is put in the last paragraph of the order of the learned Judge, does not set out the real question which was to be decided in the present case. In order to understand the facts of the case it is necessary to refer to the pleadings of the parties. On the 23rd of August 1944, the plaintiffs Rameshwar Nath and his brother Ishwar Nath, brought a suit for possession by partition of the properties held by the joint Hindu family. In the schedule Alif, attached to the plaint is given the list of the properties which had to be partitioned. No. 1 is a *kothi* in the Civil Lines, Ambala, with land and garden attached to it, No. 2, a house situate on Sapatu Road, Ambala City, No. 3, a factory called "Ladwa Ginning Factory" with the building and land attached to it situate in Ladwa, Tehsil Thanesar, District Karnal, No. 4 1/24ths share in agricultural land, No. 5, cotton factory, shops and *ghair mumkin* land (a note is added to No. 5, that in this land houses have been built and it is adjacent to the Sat Narain Ginning Factory and Motor-stand, Ambala City) and No. 6 is leasehold land on which Sat Narain Factory, has been set up. Some objections were taken in regard to the jurisdiction of the Civil Court to partition these various pieces of property but it appears that

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ultimately the parties agreed that with the exception of No. 4 all such properties should be partitioned by a Civil Court and a preliminary decree was passed on the 13th August 1945. The judgment of the Sub-Judge, on the basis of which the decree was framed, shows that there was agreement of parties to get those properties partitioned by the commissioner which were not agricultural lands and agricultural lands were expressly excluded from partition by the commissioner and were left to be partitioned by the revenue Court. It must be taken, therefore, that it was accepted by the parties that the property with regard to which the commissioner was appointed was not property which was excepted from the jurisdiction of Civil Courts. The appointment of the commissioner, on 8th January 1946, to partition these properties was also by consent of parties. The commissioner made his report to which objections were taken by the defendants. One of the objections was that a commissioner could not be appointed to partition "revenue paying estate". The judgment shows that it was conceded by the parties that the property mentioned in the application which was made by the defendants was 'revenue paying estate' but buildings had been erected upon it. The learned Judge after referring to several cases has come to the conclusion that a Civil Court could not appoint a commissioner to partition the properties in dispute. The plaintiff has come up in revision to this Court.

The proceedings show that the learned Senior Subordinate Judge has misdirected himself in regard to the scope of the preliminary decree and the effect of the agreement of the parties and it is for that reason that the learned Judge failed to exercise jurisdiction in the present case.

The plaint and the annexure "Alif" attached to it to which I have already made reference show that there were six properties in that annexure which were sought to be partitioned. The parties agreed that that portion which was agricultural lands subject to payment of revenue to the Government be excluded. The corollary from that is

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that the rest of the property was not 'estate' assessed to Government revenue and it was not open to the defendants after having agreed that the property was not such which was not subject to jurisdiction of civil Courts to turn round and say that it was, nor should they have been allowed to do so. Nor is it clear from the order of the learned Judge as to how the objections, which were now raised by the defendants, fall within section 54 of the Civil Procedure Code which section provides—

> "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 * * *".

At this stage I am also referred to two other provisions of the Civil Procedure Code, which have a bearing on this question—Order 20, Rule 18, which provides that where the Court passes a decree for the partition of property and that decree relates to an estate assessed to the payment of revenue to the Government, the decree shall declare the rights of the several parties, but shall leave the actual partition to the Collector; and Order 26, Rule 13, which gives to civil Courts the power to make partition in regard to those properties which are not covered by section 54 of the Code of Civil Procedure. The question that arises to be determined at this stage then is whether the properties for the partition of which the commissioner was appointed by a civil Court were excluded from the jurisdiction of civil Courts under the various provisions that I have mentioned above.

Now, the word "estate" has been the subject-matter of decision in several cases. In *The Secretary of State* v. *Nundun Lall* (1), an estate was brought under *butwara* under the provisions of Regulation XIX of 1814. A portion of the estate was land covered with water and unfit for cultivation and was left joint amongst all the co-sharers

(1) I.L.R. 10 Cal. 435

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The land revenue payable on account of the whole estate was apportioned amongst the several estates into which the portion divided was split up. An application was subsequently made to the Collector to partition the land which had been left joint and which had subsequently dried up. This application was refused on the ground that the land did not bear an assessed revenue and a suit was brought to compel the Collector to make the partition and in the alternative to have it made by the civil Court. It was held that the word "estate" as used in section 265 of the Civil Procedure Code of 1882, must be taken to be used in its ordinary signification and that the plaintiff was entitled to a decree for partition under the provisions of that section.

The different cases which have been decided in which the word "estate" was defined are given at page 229 of Mulla's Civil Procedure Code, Volume I. 'An estate assessed to the payment of revenue' has been interpreted to refer to estates assessed to revenue in one lump sum for the whole estate, and not to estates, like the ordinary paddy land holding in Burma, which are assessed at acre-rates and it was held in *Abdul Razik* v. *Shreenath Ghosh* (1), that a *mauza* is generally part of a revenue paying estate, but is not itself an estate assessed to the payment of revenue. In none of these cases that have been decided was there ever a piece of property such as the ones which are now in dispute adjudicated upon. They were ordinary agricultural lands which either formed one separate estate or part of an estate. No case has been cited which would show as to whether properties such as are in dispute in the present case were ever brought within the meaning of the words "estate assessed to the payment of revenue".

Apart from the fact that the parties had agreed that the properties for which the commissioner was appointed were not excluded from the jurisdiction of civil Courts no precedent has been quoted and no principle has been relied upon

(1) I.L.R. 58 Cal. 122

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which would support the view taken by the learned Senior Subordinate Judge.

Reference was then made to the provisions of the Punjab Land Revenue Act and it was submitted that this Act prohibits the civil Courts partitioning the properties such as the ones that are now in dispute. "Estate" is defined in section 3(1) of the Punjab Land Revenue Act. Section 4 of this Act is as follows :—

> "4(1) Except so far as may be necessary for the record, recovery and administration of village-cesses, nothing in this Act applies to land which is occupied as the site of a town or village and is not assessed to land-revenue."

Section 48 provides the limits of assessment and is as follows :—

> "48(1). All land to whatever purpose applied and wherever situate is liable to the payment of land revenue to the Government except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force and such land as is included in the village site."

Reference was made to an order of the Financial Commissioner, Mr. King, in *Lal Chand* v. *The Crown* (1), where it was held that land which has ceased to be agricultural does not *ipso facto* cease to be liable for payment of land revenue. I am unable to derive any assistance from this case, which only refers to the right of the State to impose land revenue even on that portion of agricultural lands on which buildings have been put up. Merely because land revenue does not cease to be payable on lands on which buildings have been put up does not in any way solve the problem

(1) 1927 L.L.T. 25

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nor do paragraphs 7 and 8 of Douie's Land Settlement Manual which only state that no assessment is imposed on village and town sites but lands which are assessed to land revenue and have been built upon still remain liable to it.

Counsel next referred to section 111 of the Punjab Land Revenue Act, which provides for an application being made to a Revenue Officer by any joint owner for partition of his share in the land. Section 120 of the Act is a provision for distribution of revenue and rent after partition. Section 141 which is to a certain extent helpful in solving the problem before us provides that orders of Civil or Criminal Courts for the attachment of land shall be addressed to the Collector. Section 158(2)(xvii) and (xviii) is as follows :—

> "158(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely, "(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of, proceedings for partition, not being a question as to title in any of the property of which partition is sought;
>
> (xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical re-distribution or as to the distribution of land revenue on the partition of an estate or holding on a periodical re-distribution of land, or as to the distribution of rent on the partition of a tenancy."

But there is nothing in these sections to show that lands, although assessed to land revenue, on which buildings have been put up are to be excluded from the jurisdiction of Civil Courts.

The effect of section 141 of the Land Revenue Act, was considered in *Vir Bhan* v. *Sham Singh* (1),

(2) A.I.R. 1924 Oudh. 300

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where it was held that "land" in section 141 of the Punjab Land Revenue Act did not comprise land on which buildings had been put up. In this judgment a previous decision of the Lahore High Court in *Nawab Ahmad Yar Khan* v. *S. K. Bose and another* (1), was distinguished and with due respect rightly so.

The word "estate" was the subject-matter of interpretation in a case *Shah Mohammed* v. *Mst. Pairi* (2), which was a case under the Pre-emption Act, and the section to be interpreted was section 15(c) of that Act, where the words used are "owner of the estate" and it was held in this case that the owner of a plot of land situate within the municipal limits of a town, which was once agricultural land and which was afterwards built upon and became urban immovable property, can no longer be deemed to be an "owner of the estate" within the meaning of section 15(c), thirdly, so as to be entitled to pre-empt the sale of agricultural land situate within the same municipal limits notwithstanding that the land is still assessed to land revenue and is shown in the revenue papers as bearing a separate *khasra* number. At page 331 the learned Judges observed—

> "Moreover, the word 'estate' as defined in the Punjab Land Revenue Act, in our opinion, applies to agricultural lands only and does not include any other class of property. As soon as agricultural land is converted into building sites, whether in a village or in a town, its owner, so to say, walks out of the estate and ceases to have any connection with it any longer. He establishes a new character for his possession and is, therefore, to be treated on that basis."

This case shows that the word "estate" as ordinarily understood would not be applicable to lands which,

(1) A.I.R. 1925 Lah. 583
(2) I.L.R. 17 Lah. 322

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though assessed to land revenue, have been built upon and have no longer the characteristic of agricultural land.

The Calcutta High Court has in *Priyanath Roy* v. *Sreedhar Chandra Roy* (1), held that section 54 of the Civil Procedure Code, does not apply to a suit for partition of a revenue paying estate when no separate allotment of revenue is asked for and the Civil Court is competent to effect partition in such a case. It is not necessary to go to that extent because this view may be contrary to the provisions of the Punjab Land Revenue Act, which are applicable to partition of lands subject to assessment of land revenue. But it shows how the word "estate" as it occurs in section 54 of the Civil Procedure Code, is to be interpreted.

Reference was made by the respondents' counsel to a judgment of the Pepsu High Court in *Partap Singh* v. *Kirpal Singh* (2), a copy of which was placed on the record but from the judgment it is difficult to find out as to what was the nature of the property to which this judgment refers and, therefore, it is not possible to draw much assistance from this judgment.

I am, therefore, of the opinion that (1), it was not open to the defendants to raise the objection as to the jurisdiction of the Civil Courts because they had agreed that this was not an estate assessed to revenue payable to the Government within the meaning of section 54, when by the consent of parties only those properties were excluded from partition by the commissioner which were agricultural lands and the rest were specifically agreed to be partitioned by the commissioner, (2) the words "estate assessed to the payment of revenue to the Government" do not cover lands which have been built upon and have become houses or factories, and (3) the Punjab Land Revenue Act does not exclude the jurisdiction of Civil Courts in

(1) A.I.R. 1945 Cal. 28
(2) R.F.A. 34 of 1950

regard to the properties which are in dispute in the present case, i.e., lands on which houses, shops and factories have been built.

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I am, therefore, of the opinion that the learned Judge was in error in ordering that the commissioner could not be appointed by a Civil Court to partition the properties contained in annexure "Alaf" as attached to the plaint. I would, therefore, allow this petition, set aside the order of the Senior Subordinate Judge and make the rule absolute. The petitioner will have his costs of the proceedings in this Court and in the Court below. The parties have been directed to appear in the trial Court on 29th June, 1953.

CIVIL REFERENCE

Before Falshaw and Kapur, JJ.

THE PUNJAB DISTILLING INDUSTRIES LTD., KHASA,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, SIMLA,—*Respondent*

Civil Reference No. I of 1953

1953

June, 16th

Indian Income-tax Act (XI of 1922)—Section 10—Security deposit received for the purposes of ensuring the return of empty bottles—Whether trading receipts.

The assessee, at the time of sale of liquor in bottles, received from its customers security deposits at certain rates approved by the Financial Commissioner to ensure the return of empty bottles in addition to the price of the bottled liquor. The assessee refunded the security deposit in respect of the empty bottles received but a substantial part of the security deposits remained with the assessee as all the empty bottles were not returned. On a petition made to the High Court the Tribunal was directed to refer the following question to it under section 66(2) of the Income-tax Act :—

"Whether, on the facts and circumstances of the case the security deposits received for the purposes of ensuring the return of empty bottles was income assessable under section 10 of Income-tax Act" ?