

Privy Council Appeal No. 45 of 1926.

Patna Appeal No. 19 of 1925.

Abdul Wahab Khan - - - - - *Appellant*

v.

Tilakdhari Lal and others - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL DELIVERED THE 4TH JULY, 1927.

Present at the Hearing :

VISCOUNT DUNEDIN.

LORD SHAW.

LORD SINHA.

[*Delivered by* LORD SINHA.]

This is an appeal from a decree of the High Court of Judicature at Patna, dated the 6th March, 1925, reversing a decree of the Subordinate Judge of Monghyr, dated the 28th April, 1921.

That decree dismissed a suit brought by the plaintiff, Tilakdhari Lal (now respondent), against the defendant, Abdul Wahab Khan, and others, for partition of an estate comprising the villages of Tetulia, Hardia, Belhanda and Dhamhare, and bearing Tauzi number 4,920 on the rent roll of the Collector of Monghyr. The High Court decreed partition.

That estate had originally formed part of a larger estate named Tappa Chautham, and received its separate Tauzi number 4,920 when carved out of the parent estate more than forty years ago. At that time its proprietors were Hansraj Singh, Bhukhan Singh and Totaram Singh, who formed a joint Hindu family.

These three persons separated in board and residence in or about 1876, and either then or afterwards separate accounts were opened for each of their shares in the estate Tauzi No. 4,920,

under Act XI of 1859. The estate, however, was not partitioned under the Estates Partition Act, but the principal defendant (Abdul Wahab Khan) alleged that there was an amicable partition between the parties of the lands comprised in the said villages whereby (1) some of the lands were thenceforth in the separate and exclusive possession of each of the three co-sharers, who separately collected the rents from the tenants of those lands, (2) in respect of some others they collected the rents each according to his share, and (3) some waste or uncultivated lands held jointly.

On the 15th May, 1888, Ram Kishun Singh, the son of Hansraj Singh (then deceased), sold to one Nawab Khan a three-annas share in the estate out of his one-third share of 5 annas 14 gundas 6 dants, and thereafter Nawab Khan had a separate account opened in the Collectorate in respect of his purchase.

Plaintiff, Tilakdhari Lal, for himself and his deceased brother, also purchased, by a series of sale deeds from different co-sharers in 'Tauzi No. 4,920, shares which in the aggregate amounted to 7 annas 2 cowries $5\frac{1}{2}$ dants, and in respect of which also a separate account in the Collectorate was opened.

He thereafter applied to the Collector for a partition of the estate No. 4,920 under the Estates Partition Act, but that application was opposed by Nawab Khan, and the Revenue authorities finally rejected it on the 3rd April, 1919.

The plaintiff filed this suit for a partition of all the lands comprised in the said four villages by the Civil Court on the 14th January, 1920, against all the proprietors of estate No. 4,920. Such partition would leave the estate an entire unit *quo ad* the Revenue authorities, but would nevertheless be binding as between the co-sharers themselves.

The principal contending defendant was Nawab Khan's son and representative (now appellant), whose estate is under the Court of Wards; and on his behalf the suit was resisted on the ground that all the lands, with the exception of a small quantity of waste or uncultivable lands, had been partitioned amicably between the parties twice before, once as between the three original proprietors, when each branch divided the lands (with the exception above named) into three several shares, and once again as between himself and his vendor.

It is the first partition which is important, as the second depends on the first. The material issues on the pleadings were :—

- (1) Whether the suit is barred by limitation.
- (2) Whether there has been a private partition.

The Subordinate Judge found in favour of the defendant on both issues, and, inasmuch as the suit was for the partition of the whole of the lands, and not merely of the undivided waste, dismissed the plaintiff's suit.

On appeal to the High Court this decision was reversed on the ground that the alleged partitions were not proved and that

there had been no such adverse possession as could create a separate title in favour of the defendant.

Their Lordships have therefore found it necessary to consider the whole of the evidence, both oral and documentary.

It is an undisputed fact that more than forty years ago, when the family separated in food and residence, some arrangement was come to between Hansraj Singh and his brothers whereby possession of by far the larger portion of the lands was distributed between them. With regard to some, it was arranged that the rents should be collected separately according to their respective shares ; with regard to others, that they should be in the exclusive possession of each co-proprietor. The plaintiff alleges that this was merely for convenience of management. The defendant asserts that it was in pursuance of a formal partition.

The learned Chief Justice of the Patna High Court was of opinion that the present state of affairs may quite possibly be explained on either hypothesis, but he considered that certain facts pointed strongly to the absence of any formal partition having taken place, in particular the absence of any deed, document or writing in connection with such partition.

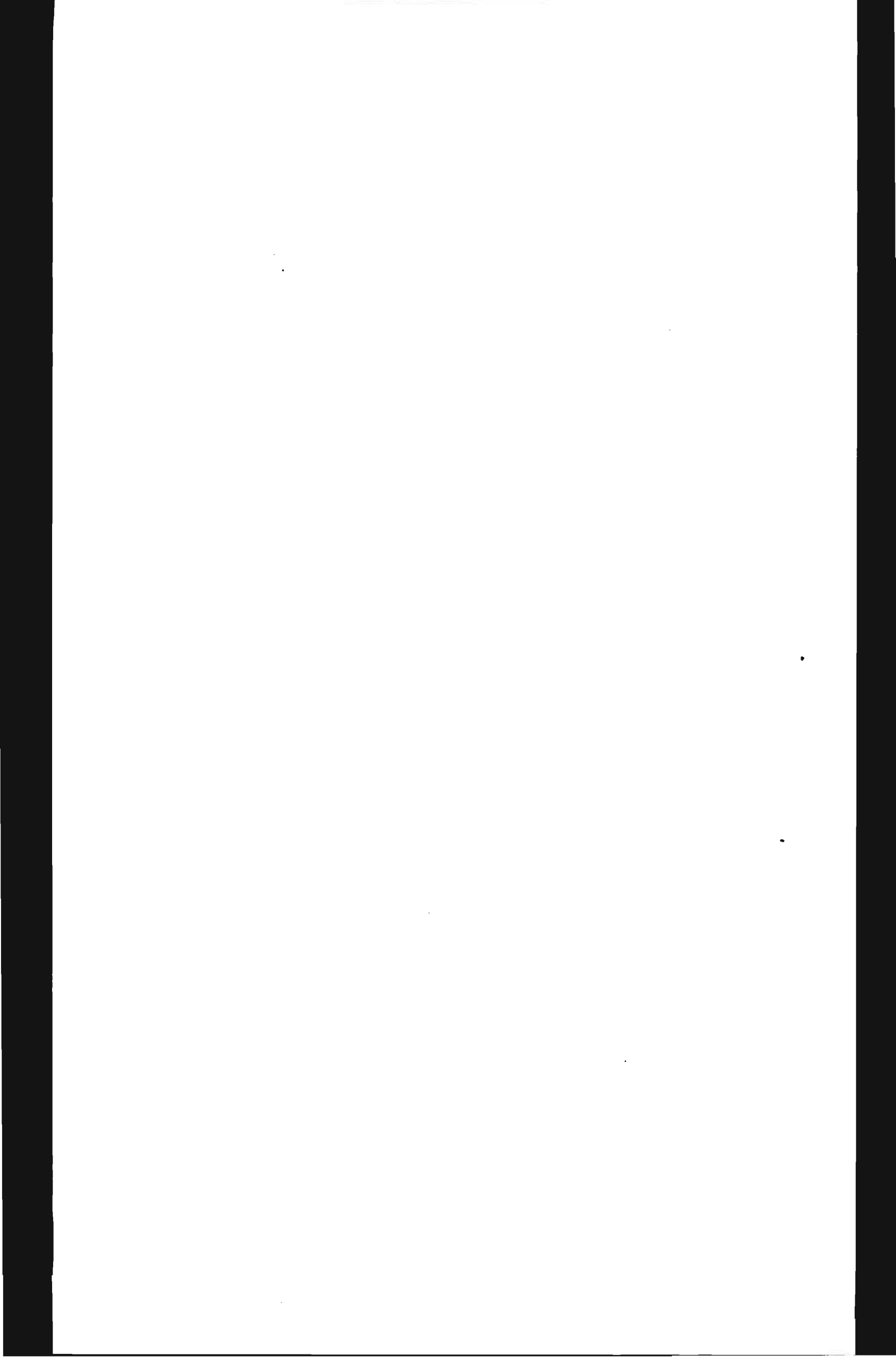
That, no doubt, is an important fact to bear in mind. It has also been urged before this Board that the plots of land which are in the exclusive possession of the proprietors are described in rent receipts and zamindari papers as *kamat*, which tends to show that they may have been taken without any formal division. But, on the other hand, there are other undisputed facts which point so strongly in the opposite direction that their Lordships have come to the conclusion that such oral evidence as there is in support of a formal partition was rightly accepted as correct by the Subordinate Judge.

These facts are :—

- (1) That the rents for definite and specific plots of land have been paid exclusively to the several proprietors for so long a period without dispute and without any subsequent adjustment or distribution ;
- (2) That there has been not only this appropriation of rents for separate plots, but when some of these were compulsorily acquired for a railway in 1903 under the Land Acquisition Act, the compensation monies were separately paid and appropriated by the separate proprietors who had been previously collecting the rents in respect of those lands ;
- (3) When a Record of Rights was prepared of these villages under the Bengal Tenancy Act and finally published in 1903, the plots referred to in (1) and (2) were recorded as being the separate property of their respective landlords, without any dispute or controversy on the part of the others ; and

- (4) The very appearance of these separated holdings, *i.e.*, the plots from which rents are collected exclusively, on the map prepared for the purposes of this case, which lie not in three compact blocks but in many cases isolated and scattered, seems to negative the theory that the arrangement for exclusive collection of rent was for convenience of management.

For these reasons their Lordships will humbly advise His Majesty that the judgment of the High Court should be set aside and the judgment of the first Court restored, with costs in both Courts and the costs of this appeal. This will be without prejudice to the right of the plaintiff to sue for partition of the lands which are admittedly still undivided.



In the Privy Council.

ABDUL WAHAB KHAN

v.

TILAKDHARI LAL AND OTHERS.

DELIVERED BY LORD SINHA.

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