

MANU/BH/0300/1929

Equivalent Citation: AIR1930Pat177, 127Ind. Cas.449

**IN THE HIGH COURT OF PATNA  
FULL BENCH**

Decided On: 24.07.1929

Appellants:**Wajihunnissa and Ors.**  
**Vs.**

Respondent:**Bankebhari Singh and Ors.**

**Hon'ble Judges/Coram:**

*Das, James and Rowland, JJ.*

**OPINION**

**Das, J.**

**1.** In my opinion the question referred for our decision does not arise in the circumstances of the case. Shortly stated the facts are as follows: The plaintiffs are the landlords and they instituted a suit for recovery of rent against one Imam Mian and also against four out of five sons left by Farzand Ali. The original tenant Nabi Bux had died leaving three sons Parzand Ali, Juman Ali and Imam Mian. It appears that at the date of the rent suit Farzand Ali and Juman Ali were dead and the suit was accordingly instituted against the surviving son Imam Mian and the four out of five sons left by Farzand Ali. The plaintiffs got a decree on 4th May 1921. They took out execution and in due course purchased the holding; at the sale held in execution of the decree. They obtained possession some time in December 1922. Some time in 1923 a suit was instituted by the present defendants, the widow of Farzand Ali and a daughter of Juman Ali, for recovery of their shares in the holding purchased by the plaintiffs. They contended that the decree obtained by the plaintiffs on 4th May 1921 was not a rent decree as all the tenants were not made parties to the suit; and they insisted that the sale did not operate to convey the holding in question to the plaintiffs but that, all that passed to the plaintiff's was the right, title and interest of the judgment-debtors. The suit succeeded and the present defendants who were the plaintiffs in that suit recovered a decree in respect of their 5/24th share. It may be mentioned that certain persons were cited as defendants in the title suit as the heirs of those who were recorded as tenants in the Record-of-Rights; but they took no part in the litigation and asked for no relief in their favour. The result was that no relief was granted to them.

**2.** The present suit was instituted by the respondents for partition of the holding as against the defendants who were the plaintiffs in the title suit. The substantial defence put forward was one of defect of parties. It was alleged that the heirs of those who were recorded in the Record-of-Rights were necessary parties to the suit and that the defect was so serious that the suit should be dismissed. The Courts below have gone into the question and have come to the conclusion that those persons have no subsisting title in the disputed holding, their claim being barred under the provisions of Article 3, Schedule 3, Ben. Ten. Act. The defendants have appealed to this Court.

The question which has been referred for our decision is:

whether Art 3, Schedule 3, Ben. Ten. Act is applicable to the dispossession of a raiyat in execution of a writ for delivery of possession issued by the civil Court to the auction purchaser who is the landlord.

**3.** As I have said, the question does not arise because I have no doubt whatever that the plea of want of necessary parties is not open to the present defendants. It is well settled that the necessary conditions for a suit for partition are; first, that there must be unity of title; and, secondly, there must be unity of possession. It is admitted that the persons whose rights are now set up by the defendants have no possession whatever in the disputed holding and so far as the question of rights is concerned, it may be mentioned that the present plaintiffs do not admit that right. It would, in my opinion, lead to unnecessary complications to convert a partition suit into a suit for title. If those persons have any rights in the disputed properties they will no doubt assert their rights in a properly constituted suit; but I am clearly of opinion that their rights being denied by the present plaintiffs and it being admitted that they are not in possession of the disputed land, it cannot be urged that they are necessary parties to a suit for partition. As the whole appeal is before us, I must] hold that there is no merit whatever in the objection and that the appeal must be dismissed with costs throughout including the costs of this reference.

**James, J.**

**4.** I agree.

**Rowland, J.**

**5.** I agree.

© Manupatra Information Solutions Pvt. Ltd.