

**Krishna Roy Vs. Jawahir Singh and ors.**

**LegalCrystal Citation :** [legalcrystal.com/860440](http://legalcrystal.com/860440)

**Court :** Kolkata

**Decided On :** Aug-24-1892

**Reported in :** (1893)ILR20Cal260

**Judge :** Macpherson and ;Banerjee, JJ.

**Appellant :** Krishna Roy

**Respondent :** Jawahir Singh and ors.

**Judgement :**

Macpherson and Banerjee, JJ.

1. The only question that arises in this appeal is whether the suit is barred under Section 244 of the Code of Civil Procedure.

2. The suit was brought by the plaintiff-appellant to recover possession of a one-gunda share out of a nine-and-half-gundas share which has been formed into estate No. 2218 of the Collector's towzi, on the allegation that the plaintiff had obtained a decree for a one-gunda share out of the share possessed by the defendants in the estate out of which the said estate No. 2218 has been formed and which was No. 831 in the Collector's towzi; that before the decree obtained by the plaintiff could be executed, the parent estate No. 831 had been partitioned by the Collector and the defendants' share in the same had been formed into a separate estate, No. 2218; and that the plaintiff's prayer for execution of the decree obtained by him was opposed by the defendants, on the ground that he could not obtain the relief that he asked for in execution of his decree.

3. The defendants raised various objections in their defence, but they were disallowed by the first Court, and the plaintiff's claim was decreed by that Court.

4. On appeal by the defendants, the Lower Appellate Court, without going into the merits of the case, has thrown out the suit on the ground that it is barred by Section 241 of the Civil Procedure Code, and that the proper course for the plaintiff was to have sought for the relief he now asks for, in execution of the decree obtained by him in the former suit.

5. In second appeal it is contended on behalf of the plaintiff that this judgment is wrong, and that the Court executing the former decree could not give the plaintiff the relief he now seeks to obtain by reason of the altered state of things that had resulted from the partition by the Collector,

6. We think that this contention is valid. The decree in the former suit gave the

plaintiff a one-gunda share of mehal No. 831, which consisted of 17 mouzahs, in every one of which the defendants had a share before the partition, and out of that share the plaintiff's one-guuda share was to come. The result of the partition has been to give the defendants the entire 16 annas of a certain number out of those 17 mouzahs, and in the remaining mouzahs the defendants have no longer any right. The undivided one-gunda share in the parent estate, which represented the plaintiff's share before the partition, according to the decree obtained by him, must now find its equivalent out of the estate No. 2218, that is, the particular mouzahs or parts of mouzahs to which the right of the defendants has now been limited; and though this mode of reduction has not involved any change in the value of the plaintiff's interest, it certainly does involve a change in the subject-matter of that interest; for whereas under the decree obtained by the plaintiff in the former suit he was entitled to a one-gunda or a 1-320th part of estate No. 831, which comprised a large tract of land, the result of the partition has been to transform that share into a larger share, i.e., according to the plaintiff' to a 2-19ths share of a smaller tract of land within defined boundaries and forming the present estate No. 2218. This transformation could not be effected without altering the decree that was given in the former suit. The question therefore that arises in the present suit, though it is a question between the same parties as those in the former suit, cannot be regarded as a question relating to the execution of the decree in the former suit. If anything, it is a question relating to the alteration of the decree in the former suit now rendered necessary by the altered state of things brought about by the Collector's partition; and no Court of execution has any authority so to alter the decree that is sought to be executed in the execution proceedings. The decision of the Lower Appellate Court is, therefore, in our opinion wrong in law and must be set aside, and the case sent back to that Court to be tried with reference to the other questions arising in it. The appellant will have his costs in this Court.

**LegalCrystal - Indian Law Search Engine - [www.legalcrystal.com](http://www.legalcrystal.com)**