

APPELLATE CIVIL.

Before *Nasim Ali J.*

TARINICHARAN CHAKRABARTI

v.

DEBENDRALAL DE.*

1935

Jan. 3, 9.

*Joint family—Purchaser of portion—Suit for partial partition—Principle—
General Rule—Hindu law.*

The purchaser of a small portion of the joint family property from one of the co-owners is entitled under the law to get a partition only of the land purchased by him. In such cases, a suit for a partial partition will lie, for to give effect to the contrary view would be to affirm the principle that a plaintiff can institute a suit for partition in respect of property, in which he has no interest at all.

Mayne's Hindu Law, 9th Ed., Article 494, at page 716, not followed.

The ordinary rule is that a suit for partition must embrace all joint properties owned by the parties thereto. But there is also the complementary rule that a suit for partition cannot include properties, in which each of the parties does not claim an interest.

Rajendra Kumar Bose v. Brajendra Kumar Bose (1) referred to.

This rule does not belong exclusively to Hindu law: it is primarily based on considerations of equity and convenience and seems to belong more to the province of adjective than substantive law.

SECOND APPEAL by the defendants.

The facts of the case and the arguments in the appeal appear sufficiently in the judgment.

Saratchandra Basak, Senior Government Pleader,
Gopalchandra Das and *Bhubanmohan Shaha* for the appellants.

Gopendranath Das for the respondents.

Cur adv. vult.

*Appeal from Appellate Decree, No. 1483 of 1932, against the decree of Nalinath Das Gupta, Third Additional Subordinate Judge of Noakhali, dated March 4, 1932, affirming the decree of Maneendranath Bhanja, Second Munsif of Sudharam, dated Dec. 8, 1930.

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NASIM ALI J. This appeal arises out of a suit for a declaration of plaintiff's title to 8 annas share of Cadastral Survey plots 395 and 596 and for recovery of *khâs* possession of the same after partition. Plaintiff based his claim on a purchase from a Hindu widow, Satyabhama, in *Pous*, 1334 B.S. The father of defendants Nos. 1 and 2 and the husband of Satyabhama were two brothers. The disputed land was a part of the joint family property of the said two brothers. Plaintiff's case is that the disputed plots were in the joint possession of defendants Nos. 1 and 2 and Satyabhama after the death of the father of defendants Nos. 1 and 2 and the husband of Satyabhama. The defence of the defendant No. 2, who alone contested the suit, was that, by an amicable partition in the year 1308 B.S. between his father and Satyabhama, the disputed plots were allotted to the share of the defendants Nos. 1 and 2 and consequently plaintiff acquired no title on the basis of his purchase from the lady. The defendant further pleaded that the suit was not maintainable in the present form, as the plaintiff is not entitled, under the law, to have a partition of only a portion of the joint family property of the defendants Nos. 1 and 2 and Satyabhama. The courts below have disbelieved the story of previous partition set up by the defendants and have decreed the plaintiff's suit. Hence the present appeal by the defendants Nos. 1 and 2.

The only point urged in support of the appeal is that the plaintiff, being the purchaser of a small portion of the joint family property from one of the co-owners, is not entitled, under the law, to get a partition only of the land purchased by him. In other words, the contention is that a suit for a partial partition does not lie. There has been some divergence of judicial opinion on the question whether an alienee from a co-sharer is entitled to institute a suit for partition of the property, in which he alone is interested. On the one hand, it has been maintained that the purchaser is exactly in the same position as

his vendor, on the other hand, it is said that the transfer effects a severance and the only joint property held in common by the purchaser and the co-sharers of his vendor is what forms the subject matter of the conveyance. To give effect to the former view would be to affirm the principle that a plaintiff can institute a suit for partition in respect of property, in which he has no interest at all. The learned advocate for the appellant, however, contends that the principle applicable to transfer of portions of joint property is not applicable to transfer of a part of joint family property of Hindus. In support of this contention the learned advocate for the appellant cited the following passage from Mayne's Hindu Law, 9th edition, Article 494 at page 716 :—

Where a stranger to the family acquires a title to a portion of the family property by purchase or under an execution, his remedy is by a suit to compel his vendor to come to a partition and so give him an absolute title. But he cannot demand a partition merely as to the portion over which he has claim. The vendor must have a complete and final partition so that all the family accounts may be taken against him and all the other members of the family must be made parties to the suit.

Mr. Mayne does not appear to have relied on any special rule of Hindu law for the above observations. The ordinary rule is that a suit for partition must embrace all joint properties owned by the parties thereto. But there is also the complimentary rule that a suit for partition cannot include properties, in which each of the parties does not claim an interest. It is true that the general rule that a partition suit should embrace all joint property ensures a just partition; otherwise parties might be greatly prejudiced as regards equitable distribution, retention of possession, liability for improvements and adjustment of accounts. See *Rajendra Kumar Bose v. Brojendra Kumar Bose* (1). This rule does not belong exclusively to Hindu law. It is primarily based on considerations of equity and convenience. It seems to me that it belongs more to the province of adjective than substantive law. In the present case, it has not been

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proved that the defendants would be, in any way, prejudiced or inconvenienced, if the application of the general rule be relaxed and partial partition be allowed. The courts below were, therefore, right in decreeing the plaintiff's suit. The appeal, therefore, fails and is dismissed with costs.

Leave to appeal under section 15 of the Letters Patent has been asked for and is refused.

Appeal dismissed.

G.S.