

## APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice, and  
Mr. Justice Handley.*

VENKATARAMA (DEFENDANT No. 3), APPELLANT,

v.

MEERA LABAI AND ANOTHER (PLAINTIFFS), RESPONDENTS.\*

1889.  
Nov. 4.  
Dec. 20.

*Hindu law—Sale by a coparcener of his share in specific property—Rights of the  
vendee—Transfer of Property Act—Act IV of 1882, s. 44.*

A purchaser from a member of an undivided Hindu family of that member's share in a specific portion of the ancestral family property cannot sue for a partition of that portion alone and obtain an allotment to himself by metes and bounds of his vendor's share in that portion of the property.

SECOND APPEAL against the decree of C. Venkoba Rau, Subordinate Judge of Madura (West), in appeal suit No. 197 of 1888, affirming the decree of M. A. Tirumalachariar, District Munsif of Dindigul, in original suit No. 634 of 1886.

Suit for the partition and delivery to the plaintiffs of the first defendant's half share in certain land. Defendants Nos. 1 and 3 were brothers and the other defendants were their sons, and they formed together an undivided Hindu family: the land which was the subject matter of the suit was part of their ancestral family property.

The first defendant, on 30th September 1885, sold to the plaintiffs his half share in the specific land, of which the plaintiff now claimed partition and delivery as above.

The District Munsif passed a decree as prayed, and the Subordinate Judge, on appeal, affirmed this decree.

The defendants preferred this second appeal.

*Desikachariar and Krishnasami Ayyar* for appellants.

*Subramanya Ayyar* for respondent.

JUDGMENT.—The question raised in this second appeal is whether a purchaser from one member of a Hindu undivided family of that member's share in a specific portion of the family property can sue for a partition of that portion alone and obtain

\* Second Appeal No. 531 of 1889.

VENKATA-  
RAMA  
v.  
MEERA LABAI.

an allotment to himself by metes and bounds of his vendor's share in that portion of the property. The point appears not to have been expressly decided by this Court, for the *dictum* in *Chinna Sanyasi v. Suriya*(1) refers only to the case of a suit by a coparcener, and *Appusami v. Dorasami*(2) as correctly remarked by the Subordinate Judge, differs from this in that the plaintiff was the vendee of the share of the coparcener in the whole family property and therefore could have sued for a share of the whole. In the present case the plaintiffs are only purchasers of the share of their vendor in a portion of the family property, and therefore cannot demand a share in the whole, and the question is, are they precluded from suing for the share sold to them in the particular portion of the family property by the general principle, which has no doubt been firmly established by the decisions, that a suit for a partial partition of undivided family property will not lie, and we are of opinion that they are. The purchaser of a coparcener's share can take no higher right than his vendor possesses, and that is not a right to a certain share in each particular item of the family property, but a joint right with the other coparceners to the ownership and enjoyment of each individual item, with an incidental right to obtain a partition of the whole family property and have his share therein made over to him after due provision for the family debts and liabilities. The judgment in *Pandurang Anandray v. Bhaskar Shadashiv*(3) points out the course to be taken by a purchaser of a share in part of the family property. He must file a partition suit against the other members of the family for the ascertainment of the share of his vendor and for the allotment to himself of his vendor's share in the particular portion in which he is interested; and we think that the rights of such a purchaser are not extended by section 44 of the Transfer of Property Act. That section only gives him "the transferor's right to joint possession or other common or part enjoyment of the property and to enforce a partition of the same," and the transferor's right is not a right to enforce partition of a particular portion of the property; and even if section 44 would otherwise enlarge the right of the purchaser, such an effect is precluded by section 2, clause (d) which declares that nothing in the chapter

(1) I.L.R., 5 Mad., 196.

(2) Second Appeal No. 626 of 1881 (not reported).

(3) 11 Bom. H.C.R., 72.

which contains that section shall affect any rule of Hindu law. There is no doubt that the rule may work hardship in some cases by throwing upon the purchaser of a coparcener's share in some small portion of a large family estate the burden of a partition suit to ascertain his vendor's share in the whole estate, but those who deal with persons having the very limited power of alienation possessed by the members of an undivided Hindu family must take the consequences. The concession of any such power of alienation was to some extent a departure from the principles upon which the Hindu law of the undivided family rests, and there is no reason for extending that concession further than it has been already extended.

We must hold that the suit in its present form will not lie. The decrees of both the lower Courts will be reversed and the suit dismissed with costs throughout.

VENKATA-  
RAMA  
v.  
MEERA LALAL.

## APPELLATE CIVIL.

*Before Mr. Justice Muttusami Ayyar and Mr. Justice Shephard.*

MAHOMED (DEFENDANT), APPELLANT,

v.

GANAPATI (PLAINTIFF), RESPONDENT. \*

1889.  
October 15.

*Religious Endowments Act—Act XX of 1863, s. 7—Regulation VII of 1817 (Madras), s. 12—Suit by a dharmakarta disaffirming the acts of his predecessor—Limitation.*

The plaintiff, who had been appointed in 1886 by the Sub-Collector to be dharmakarta of a Hindu temple, for which no committee had been appointed under Religious Endowments Act, s. 7, sued in 1886 to recover possession of land demised to the defendant on a perpetual lease in or about 1856 by a previous dharmakarta, who died in 1885 :

*Held*, (1) that Regulation VII of 1817 having been repealed as regards Hindu temples by Act XX of 1863, the appointment by the Sub-Collector gave the plaintiff no right to sue: accordingly it was necessary to determine the question whether he had such right apart from that appointment;

(2) that if the above question were answered in the affirmative, the plaintiff, since he did not derive title through his predecessor in office (the grantor of the lease), would be entitled to disaffirm his acts;

(3) that the period of limitation ran not from the date of the lease, but from the date of the accession of the plaintiff to his office.