

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

SUBRAMANYA CHETTYAR (PLAINTIFF), APPELLANT,

1896.
March 19.

v.

PADMANABHA CHETTYAR AND OTHERS (DEFENDANTS),
RESPONDENTS.*

Hindu law—Alienation of part of family property by one brother—Suit by another brother for partition of his share of the property alienated.

The plaintiff sued for partition and delivery to him of his share of a plot of land sold by defendant No. 1 his undivided brother to defendant No. 3. The land in question formed only part of the property of the family of the plaintiff and defendant No. 1 :

Held, that the plaintiff was entitled to maintain the suit.

APPEAL against the decree and judgment of D. Broadfoot, Acting District Judge of Trichinopoly, in original suit No. 4 of 1894.

The plaintiff sued his two brothers, defendants Nos. 1 and 2 and defendant No. 3, representing the Society of Jesus for the partition of certain property admittedly only a portion of the ancestral property in which he was entitled to share.

The father of plaintiff and defendants 1 and 2 died in 1860, leaving a large estate consisting of movable and immovable property, which was managed by the plaintiff's mother during the minority of her three sons until the eldest of the sons, viz., defendant No. 1, attained his majority.

On the 28th June 1882, the first defendant sold the property, the subject-matter of the present suit, and the third defendant purchased it on behalf of the Society of Jesus, such property being alleged to be portion only of the ancestral estate. The third defendant set up a defence that the suit was not maintainable, as it was brought to enforce partition of a particular parcel of family property.

The remainder of the pleadings are not now material.

The District Judge relying on *Koer Hasmat Rai v. Sunder Das*(1), dismissed the suit holding that a suit for partial partition is not maintainable.

* Appeal No. 145 of 1895.

(1) I.L.R., 11 Calc., 396.

SUBRAMANYA
CHETTYAR
v.
PADMANABHA
CHETTYAR.

Plaintiff preferred this appeal.

Sankaran Nayar for appellant.

Mr. H. G. Wedderburn, Mr. K. Brown and Pattabhirama Ayyar
for respondents.

JUDGMENT.—The District Judge ought to have followed the ruling in *Venkatachella Pillay v. Chinnaiya Mudaliar*(1), which is clearly in point.

At first sight it may seem strange that a purchaser may not bring a suit for partition in circumstances in which a member of the family other than the vendor may bring such a suit. There are reasons, however, why the one suit for partial partition should be allowed and the other not.

To allow the purchaser from one member of a family to bring a suit for the partition of the particular property purchased might facilitate members of an undivided family in dealing with the property in fraud of the rights of the family. It is not unreasonable that the purchaser should have no greater powers against the family than his vendor. On the other hand, it is to the advantage of the family to be able to ascertain by partition the particular property which the purchaser may retain and to be freed from all relations with a stranger to the family. Nor is the ability to sue for a partition of the particular property altogether disadvantageous to the purchaser, for if all the family property were brought into the suit it might turn out that the purchaser took nothing. The decision in *Venkatachella Pillay v. Chinnaiya Mudaliar*(1) is not, in our opinion, shaken by the observations, in the case in *Venkayya v. Lakshmayya*(2).

We must reverse the decree and remand the case for disposal according to law.

Costs to be provided for in the revised decree.

(1) 5 M.H.C.R., 166.

(2) I.L.R., 16 Mad., 98.