

APPELLATE CIVIL.

Before Mr. Justice Curgunven.

SIVARAMAYYA (PLAINTIFF), APPELLANT,

1929,
December 4.

v.

KAPA VENKATA SUBBAMMA AND OTHERS (DEFENDANTS),
RESPONDENTS.*

Partition Act (IV of 1893), sec. 4—Hindu family, divided in status but occupying family property in common—Suit by a purchaser of a share of dwelling house from one of the members of the family—Right of another member for benefit of sec. 4 of the Act—“Undivided family” in sec. 4, meaning of.

Where a purchaser of a share in a dwelling house from a member of a Hindu family, whose members although divided in status occupy the house in common, sues for partition of the house against the members of the family, a member of the family, who is a defendant in the suit, is competent to apply for the benefit of section 4 of the Partition Act.

Sultan Begam v. Debi Prasad (1908), I.L.R., 30 All., 324, followed.

SECOND APPEAL against the decree of the District Court of West Gōdāvāri in Appeal Suit No. 76 of 1926, preferred against the decree of the Court of the District Munsif of Ellore in Original Suit No. 318 of 1924.

The material facts appear from the judgment.

A. Satyanarayana and *P. Satyanarayana Rao* for appellant.

P. Somasundaram for respondents.

JUDGMENT.

The plaintiff bought a third share in a dwelling house and he sued for partition of it. The members of the family occupying the house were the first defendant and the plaintiff's vendor, the third defendant, who were brothers, and the second defendant, son of a deceased brother. The first defendant died during suit

* Second Appeal No. 1353 of 1926.

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and his widow the sixth defendant was added as legal representative and in that capacity she applied for the benefit of section 4 of the Partition Act of 1893. The question is whether it applies to the circumstances of the case. The family although occupying the house in common was divided in status. Section 4 has, as one of its conditions, that the share of the dwelling house in question must belong to "an undivided family". It is contended on behalf of the plaintiff, now appellant before me, that this phrase cannot apply to a family divided in status but must be restricted to what we ordinarily know as a joint Hindu family. There is no Madras decision upon this point. A Full Bench judgment of the Allahabad High Court, *Sultan Begam v. Debi Prasad*(1), is perhaps the leading authority. There had been a previous case in Allahabad, *Hashmat Ali v. Muhammad Umar*(2), relating to a Muhammadan family and in that it was decided, on the analogy of another Full Bench decision of that Court, *Amme Raham v. Zia Ahmad*(3), where the expression "joint family property" as used in article 127 of the Limitation Act was deemed to mean property belonging to a joint family, that section 4 could only apply to an undivided Hindu family and not to a Muhammadan family living together. The meaning and intention of the provision are fully discussed in *Sultan Begam v. Debi Prasad*(1). The learned Judges state the point for decision as follows :—

"It is contended on the one hand that the words 'undivided family' as used in this section mean a joint family and are confined to Hindus or to Muhammadans who have adopted the Hindu rule as to joint family property. On the other hand the contention is that the expression is of general application and means a family, whether Hindu, Muhammadan, Christian, etc., possessed of a dwelling house which has not been divided or partitioned among the members of the family."

(1) (1908) I.L.R., 30 All., 324.

(2) (1907) I.L.R., 29 All., 308.

(3) (1890) I.L.R., 13 All., 282.

They then allude to the occurrence of the same phrase "undivided family" in section 44 of the Transfer of Property Act, whence it appears to have been borrowed for the purposes of the Partition Act, and point out that the provision in the former statute is clearly of general application. It has been suggested here that the portion of section 44 of the Transfer of Property Act alluding to an undivided family would, if it merely meant a joint family, be superfluous in view of the proviso to section 2 of the Act that nothing in it shall be deemed to affect any rule of Hindu, Muhammadan, or Buddhist law. The Full Bench observes that the purpose of section 4 appears to be "to prevent a transferee of a member of a family who is an outsider from forcing his way into a dwelling house in which other members of his transferor's family have a right to live", an intention which would of course cover circumstances such as those of the present case, and they conclude by construing "undivided family" as "undivided *qua* the dwelling house in question, and to be a family which owns the house but has not divided it." There are several decisions of the Calcutta High Court to the same effect. I need only allude to the earliest one, *Kshirode Chunder Ghosal v. Saroda Prasad Mitra*(1). The learned Judges cite *Sultan Begam v. Debi Prasad*(2), with approval and explain how the law stood previous to the enactment of the Partition Act and the inconveniences which it was designed to avoid. There being no authority in conflict with these cases and it appearing to me that the phrase "undivided family" is sufficiently ambiguous to justify me in adopting the construction most in consonance with what appears to be the intention of the Act, I follow them, and agreeing, therefore, with the view taken by the lower Courts, I dismiss the second appeal with costs.

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(1) (1910) 12 Cal. L.J., 525.

(2) (1908) I.L.R., 30 All., 324.