

1905
June 8.

Before Mr. Justice Banerji and Mr. Justice Richards.
RAM CHARAN AND ANOTHER (DEFENDANTS) v. AJUDHIA PRASAD
(PLAINTIFF) AND JASODHA (DEFENDANT).*

Hindu law—Partition—Right to sue for partition of a portion of the joint family property.

One of two brothers who formed a joint Hindu family sold his own interest in a portion of the joint family property. *Held* that it was competent to the other brother to sue for partition of his share in the property so dealt with without asking also for partition of the remainder of the joint family property. *Lachmi Narain v. Janki Das* (1), *Subramanya Chettyar v. Padmanabha Chettyar* (2) followed.

ONE Baldeo Prasad died leaving a widow, Musammat Jasodha, and two sons, Ganga Dat and Ajudhia Prasad. He also left certain property, which was joint family property, and included, amongst other items, a house and three shops. Ganga Dat sold to Ram Charan and Ram Bhajan his own interest in the house and the shops. Whereupon Ajudhia Prasad brought the present suit, in which he asked for partition of his share in the house and shops. The Court of first instance (Munsif of Bareilly) dismissed the suit, holding that the plaintiff was bound to include in his suit the whole of the joint family property. On the plaintiff's appeal, however, the lower appellate Court (Subordinate Judge of Bareilly) reversed the Munsif's decision and passed a decree in favour of the plaintiff. The defendants vendees appealed to the High Court.

Munshi *Gulzari Lal* and Babu *Sital Prasad Ghosh*, for the appellants.

Munshi *Jang Bahadur Lal*, for the respondents.

BANERJI and RICHARDS, JJ.—This appeal arises out of a suit for the partition of a house and three shops which originally belonged to one Baldeo Prasad and formed part of the family property. Baldeo Prasad died leaving his widow, Musammat Jasodha, and two sons, Ganga Dat and Ajudhia Prasad. Ganga Dat sold to the appellants his interests in the house and the shops which are the subject matter of the present suit. We have examined the sale deed, and it is clear that he did not sell his interests in the whole of the family property. The present

* Second Appeal No. 914 of 1903, from a decree of Babu Prag Das, Subordinate Judge of Bareilly, dated the 5th of August 1903, reversing a decree of Babu Banke Behari Lal, Munsif of Bareilly, dated the 30th of March 1903.

(1) (1901) I. L. R., 23 All., 216. (2) (1896) I. L. R., 19 Mad., 267.

suit was brought by Ajúdhia Prasad, the brother of Ganga Dat, for a partition of his share in the property in question. The Court below has made a decree in his favour. It is contended on behalf of the appellants that the suit is not maintainable, inasmuch as it was one for partition of a part of the family property and did not embrace the whole of it. We think the contention has no force. As the appellants, the purchasers from Ganga Dat, are not interested in the remainder of the family property, they could not be made parties to a suit for a general partition of the family property, and the plaintiff was competent to sue for partition of that part of the family property in which the appellants, who are strangers to the family, are interested. This view is supported by the principle of the ruling of this Court in *Lachmi Narain v. Janki Das* (1) and by the ruling of the Madras High Court in *Subramanya Chettyar v. Padmanabha Chettyar* (2) which is a case on all fours with the present case. We accordingly dismiss the appeal with costs.

1905

 LAM
 CHARAN
 v.
 AJUDHIA
 PRASAD
 AND
 JASODHA.

Appeal dismissed.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice
 Sir William Burdett.*

 1905
 June 9.

KALI CHARAN AND OTHERS (PLAINTIFFS) v. JEWAT DUBE AND ANOTHER
 (DEFENDANTS).*

Civil Procedure Code, section 244—Execution of decree—Death of judgment-debtor pending execution proceedings—Questions arising between representatives of judgment-debtor and decree-holder.

Where a judgment-debtor dies after the passing of a decree and his legal representatives are brought on the record in execution proceedings to represent him in respect of the decree, questions which they raise as to property which they say does not belong to his assets in their hands, and as such is not capable of being taken in execution, are questions which, under section 244 of the Code of Civil Procedure, must be determined in the execution department and not by separate suit. *Seth Chand Mal v. Durga Dei* (3) and *Panchanan Bundopadhyā v. Rabia Bibi* (4) followed.

* Second Appeal No. 813 of 1903, from a decree of W. Tudball, Esq., District Judge of Gorakhpur, dated the 3rd of June 1903, reversing a decree of Munshi Achal Behari, Subordinate Judge of Gorakhpur, dated the 12th of February 1903.

(1) (1901) I. L. R., 23 All., 216.
 (2) (1896) I. L. R., 19 Mad., 267.

(3) (1889) I. L. R., 12 All., 313.
 (4) (1890) I. L. R., 17 Calc., 711.