

gift made to the two brothers was a gift in joint tenancy, the plaintiff's claim must fail, because on the death of Rajanand his brother became entitled to the whole house as surviving joint tenant. We have considered the translation of the instrument, and we find in it nothing to indicate that the gift was anything else than a gift in joint tenancy. Under the English law a conveyance of land to two or more persons without words indicating an intention that they were to take as tenants in common constitutes a joint tenancy. *A fortiori* it appears to us that in India, where the joint family is so well recognised, a gift to two brothers, members of a joint family, without indicating that they were to take as tenants in common constitutes a gift in joint tenancy. We think therefore that the view of the Court below upon the construction of this gift was correct and that there is no substance in this appeal. We dismiss it, but without costs, as no one represents the respondent.

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice Richards.
 RAM MOHAN LAL (PLAINTIFF) v. MUL CHAND AND OTHERS
 (DEFENDANTS).*

Partition—Hindu law—Purchaser of portion of property belonging to a joint Hindu family—Such purchaser competent to obtain partition a part only of the property purchased by him.

It is competent to the purchaser of property belonging to a joint Hindu family to have, if he so desires, a portion only of the property which he has purchased partitioned; he is not bound to include in his suit for partition the whole of the property which he has purchased. *Srimati Padmamani Dasi v. Srimati Jagadamba Dasi* (1) followed.

THE facts which gave rise to this appeal were as follows:—
 Out of two shops belonging to a joint Hindu family certain members of the joint family, with the consent of the other members of the family, sold their shares to one Ram Mohan Lal. The purchaser sued for partition of the share purchased by him in one of these shops. For the defence it was pleaded *inter alia* that a suit for partition of a portion only of the joint

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* Second Appeal No. 826 of 1903, from a decree of Maulvi Shah Amjadullah, Subordinate Judge of Bareilly, dated the 4th of June 1903, confirming a decree of Babu Banks Behari Lal, Munsif of Bareilly, dated the 17th of February 1903.

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property would not lie. This plea was accepted by the Court of first instance (Munsif of Bareilly) who dismissed the suit accordingly. The plaintiff appealed; but his appeal was dismissed by the lower appellate Court (Subordinate Judge of Bareilly) which agreed with the Court of first instance. The plaintiff thereupon appealed to the High Court.

Munshi *Gulsari Lal*, for the appellant.

Babu *Sital Prasad Ghosh* (for whom Dr. *Satish Chandra Banerji*), for the respondent.

BANERJI and RICHARDS, J.J.—The ground upon which the Courts below have dismissed the plaintiff's suit cannot in our judgment be supported. It appears that two shops belonged to certain members of a joint Hindu family. Some of those members sold their five-sixths share to the plaintiff on the 2nd of June 1900. It was found by the Court of first instance, and that finding was not questioned in the lower appellate Court, that this sale took place with the knowledge and consent of the other members. The plaintiff brought the present suit for partition of a five-sixths share in one of the two shops purchased by him. The Court of first instance dismissed the suit on the ground that the plaintiff had not included in his claim the other shop in which he had purchased a share. This dismissal has been affirmed by the lower appellate Court. We think that in so holding the Courts below were in error. The case was not that of a member of a joint Hindu family seeking partition of a portion of the joint family property. The plaintiff is admittedly not a member of a joint family. Therefore the property sought to be partitioned is property held by certain persons who can only be deemed to be joint owners of it. There is nothing to preclude one of the joint owners of several items of property from seeking a partition of one of such items of property. It may be that the joint owners may not deem it desirable to partition one portion of the property, but one of the owners may be desirous of partitioning another portion. There is no reason why such a partition shall not be allowed. The case of *Jogendra Nath Mukerji v. Jugobundhu Mukerji* (1) which has been referred to by the Court

(1) (1886) I. L. R., 14 Calc., 122.

of first instance, has no bearing on the present question. The case in point is that cited by the learned vakil for the respondents, namely, the case of *Srimati Padmamani Dasi v. Srimati Jagadamba Dasi* (1). In that case it was held that a person asking for partition is not compelled to include in his suit the whole of the property, but may confine his suit to a portion of the property which he is desirous of having partitioned. With this view we are in full accord. We hold that the suit has been wrongly dismissed on the ground on which the Courts below have thrown it out. We accordingly allow the appeal, set aside the decrees of the Courts below, and remand the case to the Court of first instance under section 562 of the Code of Civil Procedure with directions to readmit it under its original number in the register and dispose of it according to law. The appellant will have his costs of this appeal. Other costs will follow the event.

Appeal decreed and cause remanded.

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LAL
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CHAND.

Before Mr. Justice Banerji and Mr. Justice Richards.
GHASI RAM (PLAINTIFF) v. MANGAL CHAND AND ANOTHER
(DEFENDANTS).*

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Civil Procedure Code, sections 278 and 283—Execution of decree—Suit against successful claimant for declaration that certain property belongs to the judgment-debtor—Judgment-debtor not a necessary party.

Where a decree-holder brings a suit against a successful claimant to establish that certain property belongs to his judgment-debtor and that he is entitled to bring it to sale in execution of his decree, the only person against whom he claims relief is the successful claimant. To such a suit the judgment-debtor is not a necessary party.

IN this case Ghasi Ram held a money decree against Jiwan Ram and Ganga Sahai, and in execution thereof caused certain property to be attached as the property of the judgment-debtors. Mangal Chand preferred a claim to the property attached under section 278 of the Code of Civil Procedure on the basis of a sale deed executed in his favour by the judgment-

* Second Appeal No. 709 of 1903, from a decree of J. Deuman, Esq., District Judge of Cawnpore, dated the 26th of May 1903, confirming a decree of Babu Bipin Behari Mukerji, Subordinate Judge of Cawnpore, dated the 27th of September 1902.