

Hashmat Ali Vs. Muhammad Umar

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Court : Allahabad

Decided On : Jan-23-1907

Reported in : (1907)ILR29All308

Judge : George Knox and ;Richards, JJ.

Appellant : Hashmat Ali

Respondent : Muhammad Umar

Judgement :

George Knox and Richards, JJ.

1. This appeal arises out of an order passed by the lower appellate Court remanding the case under Section 562 of the Code of Civil Procedure for further trial. The suit was brought by the plaintiff, who had acquired a one-fifth share in a house, for partition of the share which he had acquired. both the plaintiff and the defendants (who are admittedly the 'Owners of the remaining four-fifths of the house), are Muhammadans. The Court of first instance granted the plaintiff the relief prayed for, and held that the defendants were not entitled to the benefit given by Section 4 of the Partition Act, 1893, inasmuch as the property to be partitioned was not 'a dwelling house belonging to an undivided family.' The lower appellate Court held that Section 4 did apply in the case of Muhammadans, and overruling the Court of first instance upon the preliminary point, sent the case back for trial as already stated. It is hereo contended that Section 4 cannot apply except in the case

of an undivided Hindu family, and our attention was called to the Full Bench decision of this Court in Amme Raham v. Zia Ahmad (1890) I.L.R., 13 All., 282. The respondent is not represented, but on the analogy of the Full Bench ruling we hold with some regret that Section 4 does not apply. We decree the appeal, set aside the order of the lower appellate Court and restore the decree of the Court of first instance. The appellant will get his costs.

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