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Court : Allahabad

Decided On : Apr-30-1908

Reported in : (1908)ILR30All324

Judge : John Stanley, C.J., ;Banerji and ;Aikman, JJ.

Appellant : Debi Prasad

Respondent : Sultan Begam and ors.

Judgement :

John Stanley, C.J.

1. The question which has been referred to us for determination in this case is whether or not Muhammadans are excluded from the benefit of Section 4 of the Partition Act, Act No. IV of 1893.. This section prescribes that where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family, being a share-holder, shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder. 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, et coetera, possessed of a dwelling house which has not been divided or partitioned among the members of the family. The Act purports to be a general Act extending to the whole of British India, and admittedly Sections 2 and 3 apply to Muhammadans as well as to Hindus. Section 2 enables the Court in a suit for partition, in a case in which a division of property cannot reasonably or conveniently be made and in which a sale and distribution of the proceeds would be more beneficial for all the share-holders, on the request of share-holders interested individually or collectively to the extent of a moiety or upwards, to direct a sale of the property. The succeeding section empowers the Court in a case coming within the previous section, if any share-holder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, to order a valuation of the share or shares and to offer the same to such share-holder at the price so ascertained. Then follows the fourth section; and in it we find rotling to indicate that it was intended to apply to any limited class of the community. The words 'undivided family' as used in this section appear to be borrowed from Section 44 of the Transfer of Property Act. The last clause of that section prescribes that where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the dwelling house. This provision of the Statute is clearly of general application, and the effect of it is to compel the transferee of a dwelling house belonging to an undivided family, who is a stranger to the family, to enforce his rights in regard to such share by partition. There appears to me to be no reason why the words 'undivided family' as used in Section 4 of the Partition Act, should have a narrower meaning than they have in Section 44 of the Transfer of Property Act. If the Legislature intended that Section 4 should have limited operation, we should expect to find some indication of this in the language of the section. For example, instead of the words 'undivided family' the expression 'undivided Hindu family' or 'joint family' might have been used.

2. The question came before a Bench of this Court in the case of Hashmat Ali v. Muhammad Umar (1907) I.L.R. 29 All. 308, which was a second appeal. The respondent to it was not represented. Our Brothers Knox and Richards in that case held on the analogy of the Full Beach ruling in Amme Raham v. Zia Ahmad

(1890) I.L.R. 13 All,. 282 that Section 4 did not apply to a Muhammadan family, but they did so with some regret.

3. In Amme Raham v. Zia Ahmad it was held that the words 'joint family property' in Article 127 of Schedule II of the Limitation Act mean the property of a joint family. In that case the word 'joint' which has a settled and well defined meaning is used, and it is in no sense ambiguous, It could n)t be used as descriptive of property held in common. I fail to discover that there is any analogy between the two cases.

4. It seems to me that the object of the section, as was pointed out by Mr. Wells, Judicial Commissioner, in the case of Kalka Parshad v. Bankey Lall (1906) 9 Oudh Cases, 158 is 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, and that the words 'undivided family' must be taken to mean 'undivided qua the dwelling house in question, and to be a family which owns the house but has not divided it.' It has been pointed out to us that the Partition Act has been extended to Upper Burma under the Upper Burma Laws Act, No. XIII of 1895. Not part of the Act merely, but the whole Act has been so extended. If Section 4 was intended by the Legislature to apply to Hindus only or persons who have adopted the Hindu rule of joint family property, it is unlikely that it would have so extended Section 4 in view of the fact that there are very few Hindus in Upper Burma.

5. For these reasons I would reply to the question referred to us that Muhammadans are not excluded from the benefit of the section in question.

Banerji, J.

6. I agree and have nothing to add.

Aikman, J.

7. I also concur in the judgment of the learned Chief Justice.

8. The answer of the Court is that Muhammadans are not excluded from the benefit of Section 4 of the Partition Act, Act No. IV of 1893.

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