

Janak Dulari  
v.  
Narain Das  
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Falshaw, J.

(2) The Central Government might be moved to amend the Act itself so as to make it clear that Additional Judges have jurisdiction under the Act, if this was the intention of the Legislature in the first instance.

Dua, J.

Dua, J.—I agree.

*B.R.T.*

LETTERS PATENT APPEAL.

*Before Bhandari, C. J. and Dulat, J.*

*NIHALU AND ANOTHER,—Appellants.*

*versus*

*CHANDAR AND OTHERS,—Respondents.*

**Letters Patent Appeal No. 107 of 1956.**

1958  
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Sept. 10th

*Partition—Co-owner—Rights of—Nature and extent of such rights—Co-owner—Whether can transfer any specific part of the common property—Transferee of such property—Rights of—Other co-owners, whether can file a suit for partition of the specific property transferred—Suit for partition—Whether the entire common property to be included and all co-owners to be made parties—Property transferred not exceeding the share of the transferor in the common property—Transferee of such share—Whether entitled to have that specific property assigned to himself.*

*Held*, that co-owners have no separate rights with respect to any distinct portion of the common property, but each is interested, according to the extent of his share, in every part of the whole of such property. They are at liberty to transfer their separate interest to a stranger, including an interest in a specific part of the common property, the transferee taking the same position in relation to co-owners as was occupied by the transferor. The transferee from such a co-owner simply steps into the shoes of the transferor, subject to all the rights of the other co-owners, but he may lose his title if the specific property

conveyed to him should not be set off to him or his transferee on partition. The transferee can enforce a compulsory partition of the property in order to bring the co-ownership to an end and to hold the share in severalty. The suit for partition must, however, include all the lands which form part of the common property, for a person cannot be allowed to maintain a suit in partition embracing only the part conveyed to him to bring as many suits to partition the property as his caprice may dictate. It may thus be stated as a broad general proposition that every suit in partition should include the whole of the common property even though interests of the purchaser are confined to some specific part thereof, and should bring before the Court all persons having right in the property for then alone can the rights of the co-owners and of purchasers from co-owners be properly and effectually adjudicated upon. It follows as a consequence that a person whose interest is not co-extensive with the common property may insist that the omitted property be included in the suit or at any rate that such properties should be included in the suit as will result in setting off to him in severalty some portion co-extensive with his interest. When a co-parcener sells a specific property belonging to a joint Hindu family, he is deemed to sell his share of the joint property and the transferee is entitled to have that property assigned to him if it can be done without injustice to the other co-parceners. In adjusting equities between the parties in the final decree in a suit to partition joint family properties the Court should endeavour to allot the transferee the specific properties transferred to him provided this allotment does not operate to the prejudice of the other co-parceners.

*Appeal under Clause 10 of the Letters Patent of the Punjab High Court against the judgment of Hon'ble Mr. Justice G. D. Khosla, dated 16th May, 1956, passed in S.A.O. No. 12 of 1956 reversing that of Shri Harbans Singh, District Judge, Rohtak, dated 21st February, 1956 and affirming that of Shri Birindra Singh, Sub-Judge 1st Class, Rohtak, dated 6th August, 1955, whereby a preliminary decree with costs for possession by partition of the house in dispute in favour of the plaintiffs and against the defendants was passed.*

D. N. AGGARWAL, for Appellants.

SHAMAIR CHAND and P. C. JAIN, for Respondents.

## JUDGMENT

Bhandari, C. J.      Bhandari, C.J.—This appeal under clause 10 of the Letters Patent raises the question whether the purchaser of a co-owner's share in a specific part of the common property has a right to insist that the suit for partition should include the whole of the common property and not only the specific portion of the common property sold to him.

One Mam Chand died some time ago leaving behind him three sons and three houses, and each of the three sons came to own one-third share in each of the three properties. Dipan who was in possession of one of these houses represented to Nihalu and Chandi defendants that this property had fallen to his share as the result of a mutual partition and that he was full owner of the said property and acting upon this representation the defendants agreed to take his property by way of exchange for another. Shortly after they had been put in possession of this house Daryao Singh, a brother of Dipan, and Chandar and others nephews of Dipan, brought a suit against the defendants for joint possession of the house in question and obtained a decree for possession of two-thirds share along with the defendants who were allowed to retain possession of the remaining one-third share.

On the 12th November, 1954 the plaintiffs brought a suit for possession by partition of the house which had been transferred by Dipan to the defendants. The trial Court granted a preliminary decree for possession by partition, but the learned District Judge set aside this decree on the ground that the suit had been brought only for the partition of one house and not for the partition of all the three houses belonging to the joint Hindu

family or in other words that a suit for partial partition was not competent.

The learned Single Judge before whom the second appeal was put up for consideration was unable to endorse this view. He held that what Dipan was selling was his house and if the plaintiffs had not succeeded in obtaining a decree for joint possession in the previous suit the defendants and Dipan might have been able to plead that they should be allowed to retain possession of the house until partition of the entire property; but in view of the previous decree the plaintiffs were clearly entitled to have this house partitioned without including the other two houses in the suit. The learned Single Judge accordingly allowed the appeal, set aside the order of the learned District Judge and restored the decree of the trial court. The defendants have appealed, and the question for this Court is whether the learned Single Judge has come to a correct determination in point of law.

Co-owners have no separate rights with respect to any distinct portion of the common property, but each is interested, according to the extent of his share, in every part of the whole of such property. They are at liberty to transfer their separate interest to a stranger, including an interest in a specific part of the common property, the transferee taking the same position in relation to co-owners as was occupied by the transferor. The transferee from such a co-owner simply steps into the shoes of the transferor, subject to all the rights of the other co-owners, but he may lose his title if the specific property conveyed to him should not be set off to him or his transferor on partition. The transferee can enforce a compulsory partition of the property in order to bring the co-ownership to an end and to hold the share in severalty. The suit

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for partition must, however, include all the lands which form part of the common property, for a person cannot be allowed to maintain a suit in partition embracing only the part conveyed to him or to bring as many suits to partition the property as his caprice may dictate. It may thus be stated as a broad general proposition that every suit in partition should include the whole of the common property even though interests of the purchaser are confined to some specific part thereof, and should bring before the Court all persons having right in the property, for then alone can the rights of the co-owners and of purchasers from co-owners be properly and effectually adjudicated upon. It follows as a consequence that a person whose interest is not co-extensive with the common property may insist that the omitted property be included in the suit or at any rate that such properties should be included in the suit as will result in setting off to him in severalty some portion co-extensive with his interest. When a co-parcener sells a specific property belonging to a joint Hindu family, he is deemed to sell his share of the joint property, *Kuljas Rai and others v. Rala Singh and others* (1), and the transferee is entitled to have that property assigned to him if it can be done without injustice to the other co-parceners (Mulla's Hindu Law section 261). In adjusting equities between the parties in the final decree in a suit to partition joint family properties the Court should endeavour to allot the transferee the specific properties transferred to him provided this allotment does not operate to the prejudice of the other co-parceners, *Virupaksha Reddi and another v. Chanalal Sina Reddi and others* (2).

Although Dipan had only one-third share in the house occupied by him, he transferred the

(1) 1944 P.L.R. 350  
(2) A.I.R. 1943 Mad. 652

entire house to the defendants and it seems to me, therefore, that in law he sold his entire share in the joint family property, or at any rate such part of his share as was co-extensive with the interest transferred to the defendants. In the partition proceedings which followed the defendants were entitled to claim that they should be put in possession of the property which would have fallen to the share of Dipan if he had not transferred it by way of exchange to the defendants. The plaintiffs brought a suit only for partition of a part of the joint family property and not of the whole of the property and against the defendants and not against Dipan. Had Dipan sold only one-third of the house to the defendants the suit may possibly have been maintained as framed, but as he had sold not only his one-third share in the house but the entire house, the defendants were entitled to claim that the entire property should be put into the hotchpotch, that Dipan should be impleaded as a defendant, and that they should, if possible, be given the share which Dipan had professed to transfer to them.

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The learned counsel for the plaintiffs frankly admits that the legal position is as enunciated above, but he contends that this position has been completely altered by the fact that a decree for joint possession was passed in favour of the plaintiffs and that according to this decree the plaintiffs were entitled to two-thirds share in the house and the defendants to one-third share in the said house. In view of this decree, it is contended, the plaintiffs were at liberty to bring a suit for partition of the house alone and were under no obligation to bring a suit for partition of the entire joint family property. This contention appears to me to be wholly devoid of force. Dipan was in exclusive

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possession of a house, which formed part of an undivided holding not exceeding his own share, and was entitled to retain possession thereof till partition. He transferred the house to the defendants and the latter having stepped into his shoes became entitled to remain in possession thereof till such time as partition was effected, *Kuljas Rai and others v, Pala Singh and others* (1). His two brothers who were co-owners in the property became co-sharers with the defendants in the same way as they were co-sharers with Dipan. The Court granted them a decree for joint possession as it was bound to do and declared that the plaintiffs had two-thirds share in the house and the defendants one-third. But the defendants had purchased the whole house and not only one-third of it and were entitled to have their full share. This could only be obtained by means of a partition suit. The Court could not preclude them from claiming in the partition suit which was brought subsequently that the entire joint family property should be included in the said suit and that the defendants should be allotted the house which had been transferred to them by way of exchange. The decree for joint possession could not deprive the defendants of the rights which had accrued to them as transferees from Dipan or prevent them from claiming that they should be given the property which Dipan had conveyed to them for valuable consideration.

For these reasons I would allow the appeal, set aside the order of the learned Single Judge and restore that of the learned District Judge. There will be no order as to costs.

Dulat, J.

DULAT, J.—I agree.  
K.S.K.