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**(1929) 12 MAD CK 0012**  
**In the Madras High Court**

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| Mantipragada Sivaramayya       | Vs | APPELLANT  |
| Kapa Venkatasubamma and Others |    | RESPONDENT |

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**Date of Decision :** 04-12-1929

**Acts Referred:**

Partition Act, 1893 — Section 4

**Citation :** (1930) ILR (Mad) 417 : (1930) 31 LW 238 : (1930) 58 MLJ 341

**Hon'ble Judges :** Curgenven, J

**Bench :** Division Bench

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### Judgement

Curgenven, J.—The plaintiff bought a third share in the dwelling-house and he sued for partition of it. The members of the family occupying the house were the 1st defendant and the plaintiff's vendor, the 3rd defendant, who were brothers, and the 2nd defendant, son of a deceased brother. The 1st defendant died during suit and his widow, the 6th defendant, was added as legal representative and in that capacity she applied for the benefit of Section 4 of the Partition Act of 1893, The question is whether it applies to the circumstances of the case. The family although occupying the house in common was divided in status. Section 4 has as one of its conditions that the share of the dwelling-house in question must belong to "an undivided family". It is contended on behalf of the plaintiff, now appellant before me, that this phrase cannot apply to a family divided,, in status but must be restricted to what we ordinarily know as a joint Hindu family. There is no Madras decision upon this point. A Full Bench judgment of the Allahabad High Court, Sultan Begam v. Debi Prasad I.L.R. (1908) A. 324 (F.B.), is perhaps the leading authority. There had been a previous case in Allahabad, Hash-mat Ali v. Muhammad Umar I.L.R. (1907) A. 308 relating to a Muhammadan family and in that it

was decided, on the analogy of another Full Bench decision of that Court, Amme Raham v. Zia Ahmad I.L.R.(1890) A. 282 (F.B.), where the

expression ""joint family property"" as used in Article 127 of the Limitation Act was deemed to mean property belonging to a joint family, that

Section 4 could only apply to an undivided Hindu family and not to a Muhammadan family living together. The meaning and intention of the

provision are fully discussed in Sultan Begam v. Debi Prasad I.L.R.(1908) A. 324 (F.B.). The learned Judges state the point for decision as

follows:

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, etc., possessed of a dwelling-house which, has not been divided or

partitioned among the members of the family.

2. Then they allude to the occurrence of the same phrase "undivided family" in Section 44 of the Transfer of Property Act, whence it appears to

have been borrowed for the purposes of the Partition Act, and point out that the provision in the former Statute ,is clearly of general application. It

has been suggested here that the portion of Section 44 of the Transfer of Property Act alluding to an undivided family would, if it merely meant a

joint family, be superfluous in view of the proviso to Section 2 of the Act that nothing in it shall be deemed to affect any rule of Hindu,

Muhammadan or Buddhist Law. The Full Bench observes that the purpose of Section 4 appears to be ""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,"" an

intention which would of course cover circumstances such as those of the present case; and they conclude by construing "undivided family" as

"undivided qua the dwelling-house in question and to be a family which owns the house but has not divided it". There are several decisions of the

Calcutta High Court to the same effect. I need only allude to the earliest one, Kshirode Chunder Ghosal v. Saroda Prosad Mitra (1910) Cri.L.J.

525. The learned judges cite Sultan Beyani v. Debi Prasad I.L.R.(1908) A. 324

(F.B.) with approval and explain how the law stood previous to the enactment of the Partition Act and the inconveniences which it was designed to avoid. There being no authority in conflict with these cases and it appearing to me that; the phrase "undivided family" is sufficiently ambiguous to justify me in adopting the construction most in consonance with what appears to be the intention of the Act, I follow them and agreeing therefore with the view taken by the Lower Courts, I dismiss the second appeal with costs.