

(1912) 03 MAD CK 0014
In the Madras High Court

V. Subba Row

APPELLANT

Vs

Annathanarayana Aiyar and Others

RESPONDENT

Date of Decision : 21-03-1912

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2

Citation : (1912) 23 MLJ 64

Judgement

1. The plaintiff in the suit, out of which this Second Appeal arose, purchased the right of the 3rd defendant, a member of an undivided family

consisting of defendants Nos. 1 to 8, in certain lands in court-auction in execution of a decree obtained by him against the 3rd defendant. This suit

was instituted in the District Munsif 's Court of Namakal, Salem District and was to recover the 3rd defendant's one-fourth share in those lands.

The contesting defendants pleaded that there were other properties belonging to the family in the District of Coimbatore and in the Native State of

Cochin and that the suit for the division of part only of the properties belonging to the family was not maintainable. They pleaded also that there

were debts belonging to the family and that no partition could be allowed without making provision for the discharge of those debts. There were

also other pleas, viz, that the plaintiff's claim was barred by the rule of res judicata and that the 3rd defendant had relinquished his right in the family

property before the plaintiff's purchase. We disallowed these pleas at the hearing and we do not consider it necessary to deal with them further.

2. After the issues in suit had been framed, the 1st defendant asked that certain further issues should be raised, viz., (1) whether this suit is beyond

the jurisdiction of this Court? (2) whether there are other properties, debts and incomes connected with the family as alleged by the 1st defendant?

and (3) whether all those should be included in this suit and whether they should be got by all? The District Munsif disallowed this application on the ground that they did not arise out of anything contained in the original written statement. Complaint was made in the grounds of the appeal preferred by the defendants in the District Court against the Munsif's judgment that the Munsif "ought not to have disallowed the application for further issues necessary for the proper determination of all the contentions of the parties in the case." But the vakils who appeared for the appellants intimated at the hearing "that they did not press the grounds of appeal regarding the adequacy of issues or of the necessity for framing additional issues." The defendants insisted both in the Munsif's Court and in appeal that the suit should be dismissed on the ground that it did not ask for a partition of all the properties belonging to the family, for awarding to the plaintiff the 3rd defendant's share in the lands purchased by the plaintiff. Both the lower courts disallowed this application on the ground that the rule that a suit for partial partition will not lie, does not apply where the properties not included do not lie within the jurisdiction of the court in which the suit is instituted and that such was the fact in this case as the other properties were within the jurisdiction of the courts in Coimbatore and Native Cochin. The learned District Judge relied in support of his view chiefly on *Subba Raw v. Rama Row* (1867) 3 M.H.C.R. 376. It is argued that that ruling is not applicable to suits instituted after the Civil Procedure Code, Act VIII of 1859, was repealed, according to which, a suit for recovery or partition of Immovable properties situated within the jurisdiction of more courts than one could be instituted in any one of the courts within whose jurisdiction part of the property was situate only with the permission of the court, while under the Procedure Code of 1877 (Act No. X of 1877) and the subsequent Codes such a suit could be instituted without any permission of court in any court within the local limits of whose jurisdiction any portion of the property is situate. The argument is that it was because the plaintiff could not be bound to ask for permission to include in his suit properties, situated within the jurisdiction of another court, that it was held that he was not bound to include in a suit for partition properties which were not within the jurisdiction of the court in which the suit was instituted. We are of opinion that there is force in this contention and we would be inclined to consider this question further if

we did not come to the conclusion that we were not bound in this case for other reasons to give effect to the contention that the suit must fail on the ground that it was one for partial partition.

3. The suit in this case is not by a member of an undivided family but by a purchaser of a portion of the rights of one *** the members of such a

family. It has been fully established in this Court that such a purchaser acquires the share of the member whose right he has purchased as it stood at

the time of his purchase. See the decision of the Full Bench in *Iburamsa Rowthan v. Venkatasami Naick* ILR (1910) M. 269. As pointed out by

Krishnasami Aiyar, J. in that case, the joint family ownership of the members of the family in the property alienated by one of them becomes

severed to the extent of the share of the member whose right has passed to a stranger. It; does not affect the joint tenancy (to use a convenient,

though, somewhat inaccurate expression) with respect to it, so far as the other members of the family are concerned. It is hardly necessary to one

that the joint tenancy of all thus or ****bers, including the one whose right in the particular property is transferred to a third person, with respect to

the other properties in the family, is not affected by the alienation. The position briefly is this. The members of the family preserve their undivided

status and they also continue to be all of them joint tenants with respect to all properties except that with respect to which the right of one of them

has passed to a stranger. With regard to the property affected by the transfer the alienee is a tenant in common with the members of the family

other than the alienor, those other members being still joint tenants amongst themselves with respect to their own shares. In earlier decisions of this

Court a different position had been taken up. It was held that the transfer of the right of an undivided member, in the whole or part of the family

property, gave the transferee only an equity and not what strictly could be termed a right in property, the equity being right to enforce partition and

to ask the court, out of what may be given on division to the member whose right has been transferred, some property that would be sufficient to

give effect to what the transferee purported to acquire under the transfer. This equity, it was held was liable to fluctuation so as to diminish but not

to increase and so as also not to be destroyed though liable to diminution. See the judgment of the learned Chief Justice in the case above referred

to. This position must be taken to have been now definitely abandoned after an examination of the decisions of the Privy Council and of the various

High Courts bearing on the point and we must now proceed on the footing that the transferee acquires the share of the transferrer at the time of

the transfer, but subject to this important qualification that the right obtained on transfer is subject to all the equities available to the other members

of the family against the transferrer. Thus they might shew that the transferrer was under obligations to the family which he would be bound to

satisfy before getting any share in the property transferred; and, if these obligations would completely destroy his right in that property and disentitle

him to get any share thereof, the transferee would also be subject to the same equity. But barring the liability to have such equities set up against a

transfer, the transferee is entitled to the transferrer's share as it stood at the time of the transfer. See the judgment of Sir V. Bhashyam Ayyangar, J.

in *Ayyjgari Venkatramayya v. Ayyagari Ramayya* ILR (1902) M. 690.

4. The question therefore for decision is whether a transferee who is a *tenai****** with reference only to a portion of the family property with the

members of the*****than the member whose right he has purchased is absolutely disentitled to claim a partition of the property in which

alone he is interested or is entitled to claim such partition subject to any equities that may be set up by them against his privy in interest. If the latter

position be the correct one, then the decree of the lower courts in the plaintiff's favour must be upheld, for we are of opinion, on the facts found,

that no equities have been proved which would disentitle the plaintiff to a decree for partition of the property in question. It was no doubt

contended by the defendants that there were debts binding on the family which should be provided for and they press for an issue on that question.

But in the lower appellate court they abandoned their demand for such an issue. It was not alleged that the exclusion of the properties in

Coimbatore and Cochin from this suit would subject the defendants to any disadvantage in the matter of dividing them subsequently. If then they

are not likely to suffer any injury by the partition being allowed, are we bound to dismiss the suit in Second Appeal on the ground of any rigorous

rule of law that partial partition cannot be allowed? *Ram Mohan Lal v. Mulchand* ILR (1905) A. 39, is a distinct authority against the defendant's

contention. The facts there were very similar to those in this case except that the alienation by a co-parcener in part of the family property was

made with the consent of the other members of the family. But this fact has really no bearing on the question for considerations Banerjee and

Richards, JJ. in decreeing the purchaser's claim observe.--"" 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."" The learned judges followed the decision in

Srimati Padmamani Dasi v. Srimati Jagadamba Dasi (1871) 6 B.L.R. 184. It is contended that this view is contrary to the decisions of this Court in

Venkatarama v. Meera Labai ILR (1889) M. 275 and Venkkyya v. Lakshmayya ILR (1892) M. 98 and other cases and that it is a well-

established rule that a suit for partial partition must be dismissed whether the plaintiff be a member of the family or a transferee of his rights in the

whole or a part of his property. We are of opinion that no such hard and fast rule is laid down in the decisions of the High Courts. Where the

plaintiff is a member of an undivided family the decision of the question would probably not stand on the same footing as when he is only a

transferee. In the former case, one of the objects of the suit is the dissolution of the status of undivided members and it may well be argued that the

court will not help a plaintiff who wants a division only of some of the properties. Such a division, it may be urged, may raise the question whether

the court decree would altogether effect a severance of the status of the members and make them tenants in common with respect to the properties

left undivided or whether the status of the parties would remain that of undivided co-parceners with respect to such properties. Some cases at least

seem to have recognised that the status of the members may be different with respect to the properties actually divided and those that are not

divided (see Mayne's Hindu Law, 7th Edition, Section 493). But though the parties may perhaps effect such partial severance in status, the court

may well refuse to pass a judgment which would give rise to a difficulty of this kind. It may no doubt well be held that even where a decree of court

does not direct a division of all the members, a partition decree would always have the effect of dissolving the undivided character of the family.

This would solve the difficulty mentioned above. It cannot be denied that the courts have always recognized the right to a decree for partial division

where some of the properties are beyond the jurisdiction of a court or where the property is in the possession of a mortgagee or other third party

entitled to hold it and so not available for actual division at the time (see the judgment of Ranade J. in *Shivmurteppa v. Grappa* ILR (1899) B. 128

a second suit will also lie for enforcing the division of the properties omitted in the former suit by oversight (see *Gorachand Haldar v. Basanta*

Kumar Haldar (1912) 15 C.L.J. 258. Clearly therefore there is no invariable rule that the court will not decree partial partition. After all, the

principle underlying the rule is only one of equity and convenience. It would ordinarily be unfair where the co-owners are in possession of different

portions of their common property to allow one of them to claim a partition of property in the possession of the others and to allow him to refuse to

bring into hotchpot properties in his own possession. It would also be unfair to allow partition of some only of the common properties where the

co-owners (defendants) would be prejudicially affected by a partial division, by provision not being made for the discharge of debts or for the

rendering obligations due by the plaintiff to his co-sharers in connection with the common holding. But if there is no question of any equities or of

any inconvenience, as in a case where several distinct estates are owned by the co-sharers, there seems to be no principle which requires that the

court should necessarily refuse to decree a partition of one of them. The rule against partial partition is not confined to property held by the

members of an undivided family or by joint tenant in England but applies equally to tenants in common. See *Parbati Churn Deb. v. Ainuddeen* ILR

(1881) C. 577 *Ramasami Chetti v. Alagirisami Chetti* (1903) ILR 27 M. 361 and *Duvvadu Hari Kistna Chowdury Vs. Venkata Lakshmi*

Narayana Pantulu and Others, . The right of the defendant in such a case is not to have the suit dismissed in toto but to insist on the plaintiff

including all the properties in the suit and amending his plaint for the purpose. If he refuses to do so he would no doubt run the risk of having his suit

dismissed. Mr. Freeman in his article on partition in the *Cyclopaedia of American Law and Procedure*, Volume 30, says (see page 176) "every suit

in partition should bring before the court all persons having any right or equity in the property. Therefore such suit should include all the lands of the

original co-tenancy and if it does not do so, any party, whether his interest extends throughout all such lands, or is restricted to some specific part

thereof, may insist that the omitted land or lands be included in the suit and that all persons be made parties thereto whose presence is necessary to

a partition with such lands included." The question is really one relating to processual law and must be decided not according to any rule of Hindu

Law, but according to the principles of Civil Procedure recognised and enforced by the court; the rule against partial partition owes its existence to

judiciary law as pointed out in *Iburamsa Rowthan v. Theru Venka-tasami Naick* ILR (1910) M. 269. Elsewhere than in India co-tenancy whether

as joint tenants or tenants in common is generally the result of a contract. And it may be held that where certain persons agree to hold certain

property in common one of the parties to such an agreement cannot claim to put an end to the agreement in part by claiming division of a portion

only of the property "and that if he wishes to dissolve the agreement the other parties should have a right to put an end to it in toto. But the tenure

of the members of a joint Hindu family is not the result of any agreement. It may no doubt be generally proper to concede the demand of the

defendants in a suit for partition by an undivided member that all the properties should be divided and it may be that a subsequent suit for partition

of other properties by the same plaintiff may be barred by Rule 2, Order II of the Code of Civil Procedure. But the right to insist on such division

does not stand on the same footing as it might in cases of co-tenancy arising from contracts.

5. Proceeding now to deal with the decisions, in *Srimati Padmamani Dasi v. Srimati Jagadamba Dasi* (1871) 6 B.L.R. 134 Phear, J., dealing with

the claim made by one of two Hindu daughters holding as co-parceners for a partition of part only of the joint property of both, observes, at pages

140 and 141, "I must add that I find nothing to make me think that the plaintiff must necessarily bring a suit, if he brings a suit at all, for partition of

the whole of the joint property. Clearly, if the parties themselves have already effected a partition, it could not be in the power of the plaintiff to ask

that that partition should be undone, simply in order that the whole estate might be divided de novo. I think that the plaintiff may confine his

application to the court to that particular part of the property which he is desirous of having divided; but then it follows, from the view which I have

already endeavoured to express, that, in a suit so brought, it will always be open to the other parties to show that that part of the property ought

not to be divided, or could not fairly be divided, without taking into consideration the rest of the property and dividing it also...I think that the

Advocate-General has shown no reason going to the root of the suit, why it should not be heard and a decree passed in it. If, however, on the part

of his client, he can go further than he has done and would give me ground for thinking that a fair and equitable division of the joint property of

these two ladies could not be come to without bringing in the moffussil property and making that the subject of division together with the Calcutta

property, I think I may possibly consider it right to stay the proceedings in this suit upon his undertaking to file a plaint within a reasonable time,

embracing the whole of the property and of course to ask for the necessary leave for that purpose." The observations show the real character of

the defendant's rights when a claim for partial partition is made by a co-parcener. In *Ship Suhaye Sinjh v. Nursingh Lall* (1871) 6 B.L.R. 134

Couch, C.J. refused to give any opinion upon the question whether a suit for partition of part of the property of a joint Hindu family can in any case

be allowed. The learned Judge observes that he did not intend to decide any such question in *Nanabhai Vallabhdhas v. Nathabhai Haribhai* (1870)

7 Bom. H.C.R. 26 which was relied on by the defendant and he adds that the latter case was decided upon grounds peculiar to itself. In *Radha*

Churn Dass v. Kripa Sindhu Dass ILR (1879) C. 474 Garth, C.J. and Princep, J. observe, at page 476. "It seems very doubtful whether by the

Hindu Law any partial partition of the family property can take place except by arrangement." But the learned judges based their opinion (page

477) on the ground that "in order to effect a just partition, it is necessary of course to ascertain the share to which each and every member of the

family is entitled." And they went on to say "We have not been able to find any case in the books, in which either a suit has been brought for a

partial partition, or a partial partition has been adversely decreed." The attention of the learned Judges does not seem to have been drawn to the

judgment of Phear, J. in *Srimati Padmamani Dasi v. Srimati Jagadamba Dasi* (1871) 6 B.L.R. 134. In *Haridas Sanyal v. Pran Nath Sanyal* ILR

(1886) C. 566 the refusal of partial partition, was based purely on the defendants' plea that such a decree would be unjust to the defendants in

that case. In *Jogendra Nath Muhurji v. Jugo Bundhu Muksrji* ILR (1886) C. 122 the plaintiff did not include in his plaint certain property which he claimed as his self-acquisition. It was found to be part of the joint family property. The court of first instance as well as the court of appeal dismissed the suit. In Second Appeal, Petharam, C.J. while confirming the the decision of the lower courts observed at page 123. ""Another question that arises is, whether a suit of this kind must be dismissed because it appears that the plaintiff has sought to partition only a portion of the joint property. It is a point upon which I should have thought there was room for doubt, but looking at the authorities, I find that the authorities are in favour of such a suit being absolutely dismissed because it cannot be brought in that form and therefore it seems to me we are bound to follow those authorities and to dismiss this appeal."" We are unable to agree that there really was a course of decisions which constrained the learned Chief Justice to dismiss the suit. In *Chunder Nath Nundi v. Hur Narain Deb* ILR (1881) C. 153 a claim for partial partition was allowed. The parties were tenants in common and not members of an undivided family. But as already pointed out this difference is not essential. Tottenham, J. observed ""The court might hesitate to allow him a decree for the severance of a portion only of his share, or of his proportionate shares of particular plots; but if he claims to have his whole share divided, as Mr. Bell states that he does and disclaims any share in lands not included in this suit, I see no reason why he should not obtain what he claims."" See also *Wamnaji v. Asmara* (1883) P.J. Bom 1883 Printed Judgments of the Bombay High Court for 1883, Page 337, where the same view was adopted in similar circumstances in the case of members of an undivided family. In *Parti Churn D***b v. Ainuddeen* ILR (1881) C. 577 where also the cotenants were not members of an undivided family, partial partition was refused. The claim related to a very small portion only of the common holding. The reason for the refusal was the inconvenience to which the defendant would be put. Garth, C.J. observed, at page 581, ""The defendants are entitled, by right of their patni, to an undivided four annas share in a large estate of 100 drones; and if the plaintiff was entitled to compel a partition as against the defendants of an area of two drones only, the defendants might, in respect of the same estate, be subjected to forty or fifty claims for partition at the suit of forty or fifty different

persons, each of whom is in the plaintiff's position and might be put to great expense in consequence of his estate being divided into forty or fifty

separate areas."" In *Syed Habibur Rasul Abul Faiz v. Ashita Mohan Ghosh* 12 C.W.N. 640 on the other hand, a claim for partial partition was

allowed at the instance of one of the co-owners. It is pointed out that *Parti Churn Deb v. Ainuddeen* ILR (1881) C. 177 proceeded merely on the

ground of inconvenience in the particular case. *Ram Mohan All v. Mull Chand* ILR (1901) A. 39 and *Radha Kanta Shaha v. Bipro Das Roy*

(1904) 1 C.L.J. 40 were followed. In the latter of these cases, the same view was taken of *Parti Churn Deb v. Ainuddeen* ILR (1881) C. 177 and

partial partition was allowed. See also *Hemadri Nath Khan v. Ramani Kanta Roy* ILR (1897) C. 575 and *Barahi Debi v. Deb Kamini Debi* ILR

(1892) C. 682 in which Petheram, C.J. took part and in which the correctness of *Parti Churn Deb v. Ainuddeen* ILR (1881) C. 177 was

questioned. In the Bombay High Court, Couch C.J. was supposed to have laid down in *Nanabhai Vallabhdhas v. Nathabhai Haribai* (1870) 7 Bom

H.C.R. 46 that a member of an undivided family cannot claim a partition of portion only of the family property. But that learned Judge observed in

Ship Suhaye Singh v. Nur Singh Lall (1874) 22 W.R.C.R. 352 as already pointed out, that he intended to lay down no such general rule and that

his decision proceeded on the facts of the particular case. This is clear from his judgment 7 Bom H.C.R.A.C.J 46 in which he observes, at page

49, ""Under the circumstances, it is incumbent upon him (the plaintiff) to shew that all the other lands except the parcel sued for have been divided,

or to shew the reason why they have not been divided. It seems that the plaintiff sues for a share of the lands in which there is no dispute and

leaves the defendants to claim their share in a fresh suit. This cannot be allowed. The plaintiff has not clearly shown that he relinquishes his claim to

all other land; and not having done so and being in possession himself of other undivided property, he cannot contrary to the agreement which

contemplates a single partition, sue for a parcel without including the whole claim. ""In *Udaram Sitaram v. Ranu Panduji and Venku Panduji* (1875)

11 Bom. H.C.R. 76 the plaintiff was the purchaser in court auction of the share of one of the members of a family in a portion of the family

property. The question in the case was whether a Hindu co-parcener's right in the family estate could be validly attached by a creditor. Westropp,

C.J. made certain observations regarding the nature of the rights of purchasers from a member of an undivided family. He observed, at page 82,

When share in the undivided ancestral estate of a Hindu family is mortgaged or sold, either by the parcener himself, or by way of execution, the

mortgagee or purchaser takes such share subject to such prior charges or incumbrances as may affect the family estate, or as may affect that

particular share. If the mortgage or sale be of a special portion only of the family property, it may not always be possible, consistently with prior

existing rights, for the court making the partition, to give possession of that portion to the mortgagee or purchaser. But generally it would be

possible to do so, either wholly or partially and, therefore, if without doing injustice either to prior incumbrances or co-parceners, such possession

can, on partition, be given, it would be the duty of the court making the partition, to endeavour to give effect to the mortgage or sale and so to

marshal the family property amongst the coparceners as to allot that portion of the family estate, or so much thereof as may be just, to the

mortgagee or purchaser." The learned Judge went on to say "The proper mode of attaching a parcener's share in the family property under an

ordinary money decree would seem to be that the attachment should go against the share, right, title and interest of the judgment-debtor in such

parts of the family property (naming and describing them) as the judgment-creditor can specify and against his share, right, title and interest in all

other parts of the family property. It would be unreasonable to expect the judgment-creditor to be able to specify in detail the family property, but

he should do so to the extent which his information would permit." There is nothing in these observations to show that the purchaser of an

undivided member's share in particular property cannot, under any circumstances, be allowed a decree for that member's share in the properties

transferred to him. The learned Judge merely points out how the question would have to be regarded if the purchaser claimed the whole of certain

specific property, under an alienation of the right of one of the members in the family property and what equitable pleas would be open to the other

members in such a case. In *Shivmurteppa v. Grappa* ILR (1899) B. 128 the question was fully discussed by Parsons and Ranade, J J. The

plaintiff, the purchaser of the rights of one co-parcener in a warehouse, claimed to recover the member's share in it by partition. The claim was

allowed by the lower courts. Parsons, J. observed at page 130 "It appears to us that that might be a correct mode of disposing of a case where no

one of the co-parceners except the purchaser wished a partition, but that the principle cannot be applied where a general partition is desired and

asked for." This is clear authority for the position that the other co-parceners cannot ask for the dismissal of a suit on the ground that it is one for

partial partition but can only claim that there should be a complete division amongst all the members. The learned Judge (Parsons, J.) refers to

Gadadhar v. Balvant (1888) Bom H.C. 240 where a purchaser was allowed the rights of the co-parcener in a particular item without a general

partition being decreed amongst all the members. He observes that this principle will not apply where the members of the family themselves desire

a general partition because "it is the right of every defendant in a partition suit to ask to have his own share divided off and given to him and the fact

that the partition suit has been brought by a purchaser cannot alter or annul that right." Ranade J. observed, at page 135, that, as the plaint had

been amended so as to include all the properties alleged to be jointly owned by the two brothers, the lower courts were wrong in refusing to

decree a general partition. The defendants' contention as pointed out by the learned Judge was that the share of his brother in the particular

warehouse in dispute could not be determined without considering all the equities arising between the claims of the appellant and his brother. In the

result the suit was remanded for retrial. It cannot be held that there is anything in Ranade, J.'s judgment to show that in his view the defendant

could always claim to have a suit by a purchaser for partition of the property in which he is interested dismissed and the observation of the learned

Judge regarding the general rule against partial partition must be understood with reference to the facts of the case.

6. With regard to this Court, in Venkataram v. Meera Labai ILR (1889) M. 275 Venkayya v. Lakshmayya ILR (1892) M. 98 Palani Konan v.

Masakonon ILR (1896) M. 243 suits by a purchaser for partition of property in which alone, he was interested were no doubt dismissed. The

reason for disallowing partial partition against the will of the other members without suing for a general partition of the entire family property is thus

expressed in the opinion of the Full Bench in Iburamsa Rowthan v. Them Venkatasami Naick ILR (1910) M. 269. "There may be equities which

those other members have against the vendor of the plaintiff which can only be worked out in a general suit for partition and in working out those equities the plaintiff's vendor and hence the plaintiff may be assigned a different item from the items he purported to buy or even a smaller share than those items represented." The case itself was one in which the purchaser from one of the members of his share of the property already alienated by other members to strangers sued the alienees of those others for the share of his vendor in the family property and it was held that such a suit would lie. In the order of reference to the Full Bench it is pointed out (see page 270) that there is nothing in the Hindu Law preventing a suit for partial partition and that the rule in question "is more a creature of judiciary law than of the Hindu lawgivers." The observations we have cited from the opinion of the Full Bench do not shew that, where on the pleadings or the facts found there are no equities which the other members have against the purchaser of the right of one of the members which can only be worked out in a general suit for partition, the suit for partial partition should be dismissed (see also *Hari Kistna Chowdury v. Lakshminarayana Pantulu* (1909) 20 M.L.J. 323. We may also observe that the decisions above mentioned were based on the view no longer maintained that a purchaser from an undivided member acquires nothing more than an equity to a partition. In our opinion a review of the case law on the question does not show that in a suit similar to the present case defendants are entitled to ask that the plaintiff's suit should be dismissed on the mere ground that the plaintiff has not included in his suit all the properties belonging to the family and the person whose rights he has purchased and they establish the view that the other members can only claim if they like, as pointed out by Parsons, J. that there should be a general partition amongst all the members of the family, or that before the plaintiff is allowed the share in any specific property purchased by him, the equities as between the co-parceners, the rights of one of whom he has purchased, should be taken into account and adjusted. The principle applicable to such a case is the rule governing partition between tenants in common and not that regulating partition between members of an undivided family inter se. As the plea of the existence of any equities was not pressed in this case, we are of opinion that there is no ground for interfering in second appeal with the decree of the District Court.

7. We dismiss the second appeal with costs.