SRILEKHA GHOSH (ROY) AND ANR. A

v.

PARTHA SARATHI GHOSH

JULY 9, 2002

[D.P. MOHAPATRA AND SHIVARAJ V. PATIL, JJ.] B

Partition Act, 1893—Section 4—Partition of dwelling house—Belonging to undivided family—Partition suit filed by married daughters—Application for pre-emption by co-sharer—Maintainability of—Held, not maintainable— C *The provision has no application in the instant case as the daughters cannot be said to be strangers nor have they expressed intention not to reside in the said property.*

The suit property i.e. a dwelling house was inherited by one male heir (respondent-defendant) and three female heirs viz. the widow and two D **daughters (appellants-plaintiffs nos.1 and 2). The appellants-plaintiffs acquired interest in the property by way of gift from their mother. Appellants-plaintiffs filed suit for partition of the property. There was a preliminary decree. During pendency of the suit, Plaintiff No. 2 got married. Thereafter defendant filed an application under Section 4 of Partition Act, 1893 to purchase share of plaintiff No. 2, which was** E **dismissed. Plaintiff No.2's application under Section 4 of the Act which was filed before her marriage claiming pre-emption of share of plaintiff No.1 (who was married) was decided by holding that both plaintiff No.2 and defendant had right to buy share of plaintiff No.1. Defendant's appeal against the said order was allowed holding that defendant alone was** F **entitled to purchase the share of plaintiff No.1 as plaintiff No.2 lost status of a member of undivided family after her marriage. Another application under Section 4 of the Act filed by defendant for pre-emption of share of plaintiff No.2 was dismissed on the ground that earlier such application was rejected which order had attained finality. In revision High Court allowed the application for pre-emption.** G

In appeal to this Court the question for consideration was whether respondent-defendant was entitled to purchase the share of his sister appellant-plaintiff No.2, under Section 4 of the Act.

H

A **Disposing of the appeal, the Court**

HELD: 1. The condition for application of Section 4 of Partition Act, 1893 is that a dwelling house belonging to an undivided family must have been transferred to a person who is not a member of such family and such transferee sues for partition. If this pre-condition is satisfied then if any
B **member of the family being a shareholder undertakes to buy share of such transferee the Court is to make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder. Section 4 of the Act deserves a liberal construction because its very object and purpose is to preserve the integrity of the dwelling house. [49-D, H; 50-A]**

C *Khirode Chandra* **v.** *Saroda Prasad,* **7 Ind. Cases 436 (Cal.);** *Mohomed Sulaiman Khan* **v.** *Mt. Amir Jan,* **AIR (1941) All 281;** *Krishna Pillai* **v.** *Parucutty Ammal,* **AIR (1952) Mad 33;** *Alley Hasan* **v.** *Toorab Hussain,* **AIR (1958) Pat 232;** *Paluni Dei* **v.** *Rathi Mallick,* **AIR (1965) Ori 111;***Gautam Paul* **v.** *Debi Rani Paul and Ors.,* **[2000] 8 SCC 330;** *Ghantesher Ghosh* **v.**
D *Madan Mohan Ghosh and Ors.,* **[1996] 11 SCC 446;** *Babu Lal* **v.** *Habibnoor Khan (dead) by Lrs. and Ors.,* **[2000] 5 SCC 662 and** *Narashimaha Murthy* **v.** *Susheelabai (Smt.)and Ors.,* **[1996] 3 SCC 644, referred to.**

2.1. In the context of the facts and circumstances of the case the High Court was not right in granting the petition filed by the respondent under
E **Section 4 of the Act. In** *stricto senso* **the provision of Section 4 of the Partition Act has no application in the instant case. Neither can the plaintiffs who are daughters be said to be strangers to the family; nor is there any material to show that they have expressed their intention not to reside in the suit property or to transfer their interest in the same to a**
F **person who is a stranger to the family. It is also to be kept in mind that the plaintiffs have acquired interest in the property by gift from their mother. Therefore they have stepped into the shoes of their mother. Under the circumstances the petition filed by the defendant under Section 4 of the Partition Act was not maintainable and was liable to be dismissed as premature. [58-B; 57-E, F]**

G **2.2. Keeping in view the object and purpose of preserving unity of the family dwelling house for occupation of members of the family the plaintiffs cannot be given a right to transfer their interest in the family dwelling house in favour of a stranger. If they decide not to reside in the suit dwelling house and desire to transfer their interest then they must**
H **make an offer to the defendant and if he is willing to purchase the interest**

of the sisters then he will be entitled to do so on payment of the consideration mutually agreed or fixed by the Court. [57-F, G, H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3660 of 2002.

From the Judgment and Order dated 19.04.1999 of the Calcutta High Court in CO 3529/92.

P.K. Chatterji, Abhijit Chatterji and Ranjan Mukherjee for the Appellants.

R.N. Trivedi, Additional Soliciter General and Arvind Verma (A.C.), for the Respondent.

Respondent-in-person. (N.P.)

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted.

One Sailen Ghosh was the original owner of the suit property. He died on 23rd June, 1942 leaving behind his widow Smt. Mira Ghosh, son Partha Sarathi Ghosh-who is respondent herein and two daughters namely Smt. Srilekha Ghosh (Roy) and Smt. Sulekha Ghosh (Mitra) who are the appellants herein. According to the law of succession prevailing then the respondent and his mother became joint owners of the suit property subject to the provision in Section 3(3) of the Hindu Woman's Right to Property Act, 1937. After coming into force of the Hindu Succession Act, 1956 the widow's interest became absolute and thus the respondent and his mother became co-sharers of the suit property each having a moiety share. The widow by a registered deed of gift dated 23.8.1968 gifted her share to the appellants. After acquiring half share in the suit property through their mother the appellants filed a suit Title Suit No.29/70 against the respondent seeking a decree of partition. The suit was decreed in the preliminary form on 28.2.1972 declaring 8 annas share of property of the defendant and 4 annas of each of the plaintiffs. In the preliminary decree liberty was given to the defendant to pre-empt the share of the plaintiff No.1 who was married. Subsequently plaintiff no.2 also got married on 12 June, 1976.

Before her marriage the plaintiff no.2 had filed an application under Section 4 of the Partition Act, 1893 (for short 'the Act') Misc. Case No.21

A of 1972 praying for pre-emption of the share of plaintiff no.1. During pendency of the suit plaintiff no.2 got married. Thereafter the defendant filed an application before the trial court for an order to purchase the share of plaintiff no.2. The prayer of the defendant was rejected by the trial court vide order dated 8.7.1978. However, Misc. Case No.21/72 was disposed of by the trial court on 12th January, 1980 with a finding that both plaintiff no.2 and the B defendant will have the right to buy the share of plaintiff no.1. Against the said order the defendant preferred an appeal before the High Court which was decided by the order dated 23.4.1987. The appeal was allowed and the order passed by the trial court was set aside holding that the defendant alone was entitled to purchase the share of plaintiff no.1 as after marriage the C plaintiff no.2 lost the status of a member of the undivided family. It is not in dispute that the order was not challenged before any higher forum.

After the aforementioned decision of the High Court the defendant filed an application under Section 4 of the Partition Act for purchasing 1/4th share of plaintiff no.2 under the changed circumstances. The trial court rejected D the application mainly on the ground that an application previously filed by the defendant under Section 4 of the Act had been rejected by the trial court and the order having not been challenged had attained finality. The defendant challenged the order in revision before the High Court in C.O. No.3529 of 1992, which was decided by the High Court by the order dated 19.4.1999. E The High Court allowed the Revision Petition, set aside the order of the trial judge and allowed the application for pre-emption filed by the defendant for purchasing the share of plaintiff no.2. The trial court was directed to pass all further necessary orders and directions including fixing of valuation in terms of Section 4 of the Act. The said order is under challenge in this appeal filed by the plaintiffs.

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The core question that arises for consideration in this appeal is whether the defendant is entitled to purchase the share of his sister plaintiff no.2 under Section 4 of the Act. The provision is quoted hereunder:

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> "4. Partition suit by transferee of share in dwelling-house (1) 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 shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it H thinks fit, and direct the sale of such share to such shareholder and

may give all necessary and proper directions in that behalf. A

(2) If in any case described in sub-Section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section."

B

On a plain reading of the Section it is clear that there are certain conditions for its application, such as

(1) the dwelling house must belong to undivided family;

(2) the transfer must be made to a stranger;

C

(3) transferee has filed the suit for partition and

(4) shareholder claims and undertakes to buy the share of the stranger.

The condition for application of the statutory provision is that a dwelling house belonging to an undivided family must have been transferred to a person *who is not a member of such family* and *such transferee sues for* D *partition.* If this pre-condition is satisfied then if any member of the family being a shareholder undertakes to buy the share of such *transferee* the Court is to make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such share-holder.

Coming to the case in hand it appears from the discussions in the E impugned order that the High Court has proceeded on the assumption that a daughter on getting married ceases to be a part of the family of her father for the purpose of Section 4 of the Act. It is on this assumption that the respondent made the application under Section 4 of the Act to purchase the share of plaintiff no.2 who had got married during pendency of the petition filed by F her under that Section for purchasing the share of her married sister plaintiff no.1.

The question for consideration is whether for the purpose of application of Section 4 of the Act a married daughter can be said to be "a person who is not a member of such family". If the question is answered in the affirmative G then the application filed by the respondent was maintainable and could be considered on merit. If the question is answered in the negative then Section 4 of the Act is not applicable and the application filed by the respondent is to be rejected as not maintainable.

The position is well settled that Section 4 of the Act deserves a liberal H

A construction because its very object and purpose is to preserve the integrity of the dwelling house. Sir Ashutosh Mukherjee in his classical exposition of the meaning of the term 'family' in the case of *Khirode Chandra* v. *Saroda Prasad,* 7 Ind. Cases 436 (Cal.) observed:

> B "The word "family" as used in the Partition Act ought to be given a liberal and comprehensive meaning, and it does include a group of persons related in blood, who live in one house or under one head or management. There is nothing in the Partition Act to support the suggestion that the term "family" was intended to be used in a very narrow and restricted sense, namely, a body of persons who trace C their descent from a common ancestor."

Therein it was further observed :

> "When regard is had to Hindu social customs and manners, it is difficult to hold that the term "family" is not comprehensive enough D to include such a body of persons. Indeed, in cases where there are no male children in the family and the daughters alone are entitled to the inheritance, their husbands very often live as members of the family, and they with their wives may not inappropriately be treated as the "family" some members of which have shares in the dwelling house."

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This decision has been considered to be a leading authority on the question in issue. The same principle has been followed by different High Courts in *Mohomed Sulaiman Khan* v. *Mt. Amir Jan,* AIR (1941) All 281; *Krishna Pillai* v. *Parukutty Ammal,* AIR (1952) Mad 33; *Alley Hasan* v. *Toorab Hussain,* AIR (1958) Pat 232; and *Paluni Dei* v. *Rathi Mallick,* AIR F (1965) Ori 111.

In *Paluni Dei* case (supra) the Orissa High Court held that the defendant no.2 in the case though was married and residing with her husband elsewhere, she at times used to reside in her father's house and had not abandoned her G intention to reside there; she was related by blood to the family of the owner; she must therefore be treated as a member of the undivided family qua the dwelling house of defendant 1. She being a shareholder is entitled to buy the share of the plaintiff-transferee. The High Court held that judgment of the Court below rejecting her claim is contrary to law and must be set aside.

H In the case of *Gautam Paul* v. *Debi Rani Paul and Ors.,* [2000] 8 SCC

330 this Court considered the question of liberal interpretation to be given to the provisions of Section 4 of the Act. This Court made the following observations:

> "Let us now consider whether the sale to the appellant by Bibhuti Paul can be said to be a sale to an outsider or a stranger to the family. Undoubtedly, Section 4 should be given a liberal interpretation. However, giving a liberal interpretation does not mean that the wordings of the Section and the clear interpretation thereof be ignored. The relevant wordings are "dwelling house belonging to an undivided family". Thus it must be a dwelling house belonging to an undivided family. The further requirement is that the transfer must be to a person who is not a member of "such family". The words "such family" necessarily refers to the undivided family to whom the dwelling house belongs."
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> xxx xxx xxx
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> "We are in agreement with this opinion. There is no law which provides that co-sharer must only sell his/her share to another co-sharer. Thus strangers/ outsiders can purchase shares even in a dwelling house. Section 44 of the Transfer of Property Act provides that the transferee of a share of a dwelling house, if he/she is not a member of that family, gets no right to joint possession or common enjoyment of the house. Section 44 adequately protects the family members in which an outsider can get possession is to sue for possession and claim separation of his share. In that case Section 4 of the Partition Act comes into play. Except for Section 4 of the Partition Act there is no other law which provides a right to a co-sharer to purchase the share sold to an outsider. Thus before the right of pre-emption, under Section 4, is exercised the conditions laid down therein have to be complied with. As seen above, one of the conditions is that the outsider must sue for partition. Section 4 does not provide the co-sharer a right to pre-empt where the stranger/outsider does nothing after purchasing the share. In other words, Section 4 is not giving a right to a co-sharer to pre-empt and purchase the share sold to an outsider anytime he /she wants. Thus even though a liberal interpretation may be given, the interpretation cannot be one which gives a right which the legislatures clearly did not intend to confer. The legislature was aware that in a suit for partition the stranger/outsider, who has purchased a share, would have to be made a party. The legislature was aware that

A in a suit for partition the parties are interchangeable. The legislature was aware that a partition suit would result in a decree for partition and in most cases a division by metes and bounds. The legislature was aware that on an actual division, like all other co-sharers, the stranger/outsider would also get possession of his share. *Yet the legislature did not provide that the right for pre-emption could be* B *exercised "in any suit for partition". The legislature only provided for such right when the "transferee sues for partition". The intention of the legislature is clear. There had to be initiation of proceedings or the making of a claim to partition by the stranger/outsider. This could be by way of initiating a proceeding for partition or even* C *claiming partition in execution. However, a mere assertion of a claim to a share without demanding separation and possession (by the outsider) is not enough to give to the other co-sharer a right of pre-emption. There is a difference between a mere assertion that he has a share and a claim for possession of that share.* So long as the stranger-purchaser does not seek actual division and possession, either D in the suit or in execution proceedings, it cannot be said that he has sued for partition. The interpretation given by Calcutta, Patna, Nagpur and Orissa High Courts would result in nullifying the express provisions of Section 4, which only gives a right when the transferee sues for partition. If that interpretation were to be accepted then in all E cases, where there has been a sale of a share to an outsider, a co-sharer could simply file a suit for partition and then claim a right to purchase over that share. *Thus even though the outsider may have, at no stage, asked for partition and for the delivery of the share to him, he would be forced to sell his share. It would give to a co-sharer a* F *right to pre-empt and purchase whenever he/she so desired by the simple expedient of filing a suit for partition. This was not the intent or purpose of Section 4. Thus the view taken by Calcutta, Patna, Nagpur and Orissa High Courts, in the aforementioned cases, cannot be said to be good law."* (Emphasis supplied)

G In the case of *Ghantesher Ghosh* v. *Madan Mohan Ghosh and Ors.* [1996] 11 SCC 446 this Court interpreting Section 4 of the Partition Act made the following observations :

"In order to answer this moot question, it has to be kept in view what the legislature intended while enacting the Act and specially Section H 4 thereof. The legislative intent as reflected by the Statement of Objects

and Reasons, as noted earlier, makes it clear that the restriction imposed on a stranger transferee of a share of one or more of the co-owners in a dwelling house by Section 44 of the T.P. Act is tried to be further extended by Section 4 of the Partition Act with a view to seeing that such transferee washes his hands off such a family dwelling house and gets satisfied with the proper valuation of his share which will be paid to him by the pre-empting co-sharer or co-sharers, as the case may be. This right of pre-emption available to other co-owners under Section 4 is obviously in further fructification of the restriction on such a transferee as imposed by Section 44 of the T.P. Act."

This Court in the case of *Babu Lal* v. *Habibnoor Khan,* (dead) by Lrs. and Ors., [2000] 5 SCC 662 considering the applicability of Section 4 of the Act observed:

"Therefore, one of the basic conditions for applicability of Section 4 as laid down by the aforesaid decision and also as expressly mentioned in the section is that the stranger-transferee must sue for partition and separate possession of the undivided share transferred to him by the co-owner concerned. It is, of course, true that in the said decision it was observed that even though the stranger-transferee of such undivided interest moves an execution application for separating his share by metes and bounds it would be treated to be an application for suing for partition and it is not necessary that a separate suit should be filed by such stranger-transferee. All the same, however, before Section 4 of the Act can be pressed into service by any of the other co-owners of the dwelling house, it has to be shown that the occasion had arisen for him to move under Section 4 of the Act because of the stranger-transferee himself moving for partition and separate possession of the share of the other co-owner which he would have purchased. This condition is totally lacking in the present case. To recapitulate, Respondent 1 decree-holder himself, after getting the final decree, had moved an application under Section 4 of the Act. The appellant, who was a stranger purchaser, had not filed any application for separating his share from the dwelling house, either at the stage of preliminary decree or final decree or even thereafter in execution proceedings."

At this stage it will be relevant to notice the provisions of Section 23 of the Hindu Succession Act and Section 44 of the Transfer of Property Act, under which preferential right to acquire property in certain cases particularly

A in respect of the dwelling houses, is dealt with. The said Sections are quoted hereunder:

> "23. Special provisions respecting dwelling-houses—Where a Hindu intestate has left surviving him or her both male and female heirs specified in Class I of the Schedule and his or her property includes
> B a dwelling-house wholly occupied by members of his or her family, then notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence
> C therein;
>
> Provided that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling—house only if she is unmarried or has been deserted by or has separated from her husband or is a widow."

D Section 44 of the Transfer of Property Act reads as follows:

> "Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest,
> E and in so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.
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> F 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 house."

Although the statutory provisions are not very happily worded it is G clear from Section 23 that it expressly recognizes the right of a female heir to reside in the family dwelling house. This is the position despite the restriction statutorily placed on her right to claim partition of such dwelling house.

In the case of *Narashimaha Murthy* v. *Susheelabai (Smt.) and Ors.*, [1996] 3 SCC 644, this Court considering the provisions of Section 23 of the H Act in the light of Section 4(1) of Partition Act and Section 44 of the Transfer

of Property Act made the following observations: A

"Attention may now be invited to the last sentence in the provision and the proviso, for there lies the clue to get to the heart of the matter. On first impression the provision may appear conflicting with the proviso but on closer examination the conflict disappears. A female heir's right to claim partition of the dwelling house does not arise B until the male heirs choose to divide their respective shares therein, but till that happens the female heir is entitled to the right to reside therein. The female heir already residing in the dwelling house has a right to its continuance but in case she is not residing, she has a right to enforce her entitlement of residence in a court of law. The proviso C makes it amply clear that where such female heir is a *daughter*, she shall be entitled to a right of residence in the dwelling house only if she is unmarried or has been deserted by or has separated from her husband or is a widow. On first impression, it appears that when the female heir is the daughter, she is entitled to a right of residence in the dwelling house so long as she suffers from any one of the four D disabilities i.e. (1) being unmarried; (2) being a deserted wife; (3) being a separated wife; and (4) being a widow. It may appear that female heirs other than the daughter are entitled without any qualification to a right of residence, but the daughter only if she suffers from any of the aforementioned disabilities. If this be the E interpretation, as some of the commentators on the subject have thought it to be, it would lead to a highly unjust result for a married granddaughter as a Class I heir may get the right of residence in the dwelling house, and a married daughter may not. *This incongruous result could never have been postulated by the legislature. Significantly, the proviso covered the cases of all daughters, which* F *means all kinds of daughters, by employment of the words "where such female heir is a daughter" and not "where such female heir is the daughter". The proviso thus is meant to cover all daughters, the description of which has been given in the above table by arrangement.* The word 'daughter' in the proviso is meant to include daughter of G a predeceased son, daughter of a predeceased son of a predeceased son and daughter of a predeceased daughter. The right of residence of the female heirs specified in Class I of the Schedule, in order to be real and enforceable, presupposes that their entitlement cannot be obstructed by any act of the male heirs or rendered illusory such as in creating third party rights therein in favour of others or in tenanting H

A it, creating statutory rights against dispossession or eviction. What is meant to be covered in Section 23 is a dwelling house or houses, (for the singular would include the plural, as the caption and the section is suggestive to that effect) fully occupied by the members of the intestate's family and not a house or houses let out to tenants, for then it or those would not be dwelling house/houses but merely in
B description as residential houses. *The section protects only a dwelling house, which means a house wholly inhabited by one or more members of the family of the intestate, where some or all of the family members, even if absent for some temporary reason, have the animus revertendi. In our considered view, a tenanted house therefore is not a dwelling*
C *house, in the sense in which the word is used in Section 23.*

xxx xxx xxx

The second question does not present much difficulty. On literal interpretation the provision refers to male heirs in the plural and
D unless they choose to divide their respective shares in the dwelling house, female heirs have no right to claim partition. In that sense there cannot be a division even when there is a single male. It would always be necessary to have more than one male heir. One way to look at it is that if there is one male heir, the section is inapplicable, which means that a single male heir cannot resist female heir's claim
E to partition. This would obviously bring unjust results, an intendment least conceived of as the underlying idea of maintenance of status quo would go to the winds. This does not seem to have been desired while enacting the special provision. It looks nebulous that if there are two males, partition at the instance of female heir could be resisted,
F but if there is one male, it would not. *The emphasis on the section is to preserve a dwelling house as long as it is wholly occupied by some or all members of the intestate's family which includes male or males.* Understood in this manner, the language in plural with reference to male heirs would have to be read in singular with the aid of the provisions of the General Clauses Act. It would thus read to mean
G that when there is a single male heir, unless he chooses to take out his share from the dwelling house, the female heirs cannot claim partition against him. It cannot be forgotten that in the Hindu male-oriented society, where begetting of a son was a religious obligation, for the fulfilment of which Hindus have even been resorting to
H adoptions, it could not be visualized that it was intended that the

single male heir should be worse off, unless he had a supportive second male as a Class I heir. The provision would have to be interpreted in such manner that it carries forward the spirit behind it. The second question would thus have to be answered in favour of the proposition holding that where a Hindu intestate leaves surviving him a single male heir and one or more female heirs specified in Class I of the Schedule, the provisions of Section 23 keep attracted to maintain the dwelling house impartible as in the case of more than one male heir, subject to the right of re-entry and residence of the female heirs so entitled, till such time the single male heir chooses to separate his share; this right of his being personal to him, neither transferable nor heritable." (Emphasis supplied)

Applying the ratio in the aforementioned decided cases to the case in hand the position that emerges is that the last owner of the suit property left one male heir (son) and three female heirs (widow and two daughters) who succeeded to the suit property. The widow transferred her interest in the suit property by gift in favour of her two daughters, who in course of time got married; the two daughters filed the suit for partition of the suit property which was a family dwelling house; the partition suit was decreed preliminary; at the stage of execution proceedings the petition has been filed by the male heir i.e. the brother of the plaintiffs claiming right of pre-emption to purchase the share of one of the sisters (plaintiff no.2). In *stricto senso* the provision of Section 4 of the Partition Act has no application in the case. Neither can the plaintiffs who are daughters be said to be strangers to the family nor is there any material to show that they have expressed their intention not to reside in the suit property or to transfer their interest in the same to a person who is a stranger to the family. It is also to be kept in mind that the plaintiffs have acquired interest in the property by gift from their mother. Therefore they have stepped into the shoes of their mother. Under the circumstances the petition filed by the defendant under Section 4 of the Partition Act was not maintainable and was liable to be dismissed as premature. At the same time keeping in view the object and purpose of preserving unity of the family dwelling house for occupation of members of the family the plaintiffs cannot be given a right to transfer their interest in the family dwelling house in favour of a stranger. If they decide not to reside in the suit dwelling house and desire to transfer their interest then they must make an offer to the defendant and if he is willing to purchase the interest of the sisters then he will be entitled to do so on payment of the consideration mutually agreed or fixed by the Court.

A We are persuaded to pass this Order keeping in view the interest of all the members of the family i.e. the son and two daughters and their family members and the importance of preserving the unity of the family dwelling house which is meant for occupation of successors of the original owner, Sailen Ghosh.

B We are of the view that in the context of the facts and circumstances of the case the High Court was not right in granting the petition filed by the respondent under Section 4 of the Act. Accordingly the order of the High Court under challenge is modified in the manner and to the extent noted above and the appeal is disposed of accordingly. There will be no order for C costs.

K.K.T. Appeals disposed of.