

**Civil Procedure Code, 1908 (V of 1908), S. 94, 151, Order 39, R. 1, 2 – Mandatory [injunction](#) - Transfer of Property Act (IV of 1882), S. 44 - [partition](#) Act (IV of 1893), S. 4 - Irreparable injury which could not be compensated in terms of money and whether the balance of convenience is in favour of the appellant .**

In the absence of a document evidencing partition of the suit house by metes and bounds and on the documentary [evidence](#) showing that the property is held by the appellant and his brother in equal undivided shares, we are of the view that the plaintiff-appellant has shown a prima facie case that the dwelling house belonged to an undivided family consisting of himself and his brother.

While Section 44 does not give a transferee of a dwelling house belonging to an undivided family a right to joint possession and confer a corresponding right on the other members of the family to deny the right to joint possession to a stranger transferee, Section 4 of the Partition Act gives a right to a member of the family who has not transferred his share to purchase the transferee's share on a value to be fixed in accordance with law when the transferee filed a suit for partition. Both these are valuable rights to the members of the undivided family whatever may be the object or purpose for which they were conferred on such members. As we have pointed out in some cases it is stated that the right to joint possession is denied to a transferee in order to prevent a transferee who is an outsider from forcing his way into a dwelling house in which the other members of his transferee's family have a right to live. In some other cases giving joint possession was considered to be illegal and the only right of the stranger-purchaser is to sue for partition. All these considerations in our opinion would go only to show that denying an injunction against a transferee in such cases would prima facie cause irreparable injury to the other members of the family. [

Buyer knew that the vendor-seller have only a limited right to transfer their undivided one half share and they contemplated litigation in this regard, the said sale was hurriedly executed in a hush-hush manner, respondents-defendants were attempting to forestall the situation and to gain an undue advantage in a hurried and clandestine manner defeating the appellant's attempt to go to court for appropriate relief.

Injunction granted.

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Tags: [CPC O. 39 R. 1](#), [Partition Act S. 4](#), [TPA S. 44](#)