

Partition Suit section 4 (Buy up)

1. First Stranger purchaser accommodated the suit land as compromising with other co-sharers and subsequently first stranger sale the same to new stranger, application for buy up under section-4 of partition act is maintainable against new stranger. | *1 XP (AD)1*
2. Necessary elements for buy up: 1. The House belongs to undivided dwelling house. 2. The share there of has been transferred to one who is not a member. 3. The transferee should sue for partition. | *26 DLR 96, 6 LM(AD) 13, 7 XP(AD) 277, 15 ALR(AD) 146, 4 LNJ 561, 8 LNJ(AD) 75*
3. What is Dwelling House ? : "Dwelling house belongs to an undivided family" appearing in sec.-4 of partition Act . borrowed from sec.-4 of The Transfer of property Act. and bears the same meaning, a commercial business place cannot be termed as a dwelling house. Under sec.-4 of the partition Act..... but it is a commercial place which includes restaurant and hotel run by the petitioner and many shops rented to different shopkeepers for running business as commercial place. The High Court Division also found that the application under sec.-4 does not show any specific identification of dwelling house that covers the specific area of suit land..... | *8 ALR(AD) 66, 1 LM(AD) 394*
4. The suit land under partition was not dwelling house and as such U/S -4 of partition Act was not applicable for privilege of getting pre-emption. | *1 XP(AD) 1, 2 XP(AD) 133*
5. Brother and Daughter of one wife of original owner is not a member of undivided family. | *7 XP(AD) 277*
6. It is beneficial legislation for the benefit of a co-sharer in preserving the sanctity and privacy of an undivided dwelling Houser or an undivided homestead against the onslaught of a stranger purchaser. It is an opportunity to existing co-sharer to buy-up his share through the court. | *2 ALR 353*
7. Against the judgment and preliminary decree passed by the court, defendant no 2 did not prefer any appeal. It is means that he is not aggrieved by the judgment of the trial court. | *3 ALR 292*
8. With Sec-4 of Transfer of property Act: The right of pre-emption of co-sharer U/S-4 will be available only if the transferee sue for partition. In a suit filed by co-sharer, another defendant co-sharer cannot claim a right of pre-emption U/S-4 in respect of a portion of which has been alienated in favor of another person. | *15 ALR(AD) 146*
9. The right of pre-emption U/S-4 would only arise when the stranger purchaser seek separate allotment of share. So, long as such step is not taken, the co-sharer's petition filed U/S - 4 not tenable. | *15 ALR(AD) 146, 8 LNJ(AD) 106*
10. Building, Huts, Country yard, Orchard, the tanks and their banks adjacent thereto are integral parts of the homestead and are required for convenient use of the member of undivided family. A co-sharers of undivided family has irresistible right to buy up the property of homestead sold to stranger. | *13 MLR(HCD) 199*
11. Unless the defendant in a partition suit succeeds in establishing that the parcel of the homestead of their joint family is sold to stranger and he needs the same for convenient living in the said house, he cannot claim to buy up said part to land. When he did not raise any objection to the other stranger Purchasers on the plea of their being compromising , he cannot claiming to purchase the land sold to the plaintiff on a different plea. | *12 MLR(AD) 169*
12. The suit property is otherwise completely separated from the other part of the property-- No buy up. | *7 BLC 90*
13. One party claimed dwelling house and other claimed commercial property include restaurant and shops in occupation of tenants years after years and on such fact cannot be invoke the said sec-4 of the Act. | *3 LNJ 819*

14. The pre-emption case U/S -4 of partition Act is an independent proceeding in which schedule of case land and particulars of the disputed deeds are very much required to be described and made in details otherwise the pre-emption case must fail. | **4 LNJ 561**
15. There is no time limit for filling application U/S-4 of Partition Act. | **4 LNJ 561**
16. Defendant in a suit for partition to avail the provision U/S-4 of the partition Act is required to establish that the person seeking partition is stranger purchaser for the co-sharer(S) of dwelling house of an undivided family. | **59 DLR(AD) 69**
17. It is apparent that some portion of the homestead and land of suit schedule has already been transferred to the opposite party and the petitioner himself sold homestead and pond from suit land to another defendant of the suit which is admitted by the petitioner in his cross-examination and confirmed by P.W- 2 --not entitled to get any relief U/S-4. | **23 BLT(HCD) 125**
18. In a case U/S-4 of the partition Act the possession of the parties is not at all a necessary factor to be considered. So, the allowance of the prayer for buy up on the ground that the petitioner is in possession of property in question and the purchaser opposite parties are not in possession has been most erroneous and illegal. | **11 ADC 418**