

PARTITION

Introduction

The division of property into two parts is known as partition. Under the Hindu law, partition means a division of property of a Joint Hindu family in order to give separate conferment of status on the undivided coparceners. It is pertinent to note that no partition is possible if there is only a single coparcener in a Joint family. A coparcener is a person who inherits estate as coher with others.

The concept of a coparcener is an integral part of the Joint family property in accordance with the Hindu Law. Each of the coparceners has an equal share of the property of the Joint Hindu Family and each of them reserves an inherent title in the property. If a Hindu Joint family decides to do partition then its joint status of a family comes to an end. However, in order to establish a state of jointness among the coparceners in a family, it is imperative to have at least two coparceners present in the family.

A partition can be possible on the property which is capable of being partitioned. If at all there is a separate property of any of the coparceners in the Joint family it cannot be subjected to partition³. In the case of **Mrutunjay Mohapatra v. Prana Krushna Mohapatra**, the Court stated that when the elder brother had purchased the property from his persona funds it cannot be subjected to partition and included in the Joint Family at the instance of a younger brother.

Moreover, in the case of **Prafulla Kumar Mohapatra v. Joy Kanta Krushna Mohapatra** the court stated that when the property belongs to the paternal uncle and there is no substantial evidence about the share of the property of claimant's father, it would be considered as separate property and not a property of Joint Hindy family.

Partition under Mitakshara and Dayabhaga School

Dayabhaga school: In a Dayabhaga school every adult coparcener reserves a right to demand partition by the physical demarcation of his shares. Such partition must be in accordance with the demarcation of specific shares of partition i.e. partition by bounds and metes.

Mitakshara school: In Mitakshara school there is no demarcation of property into specific shares, and essentials of a coparcener need to be established, but the existence of Joint property is not an essential element for demanding partition. All it takes to demand a partition is a definite and unequivocal declaration that conveys his intention of separating from the family.

De jure and De facto Partition

De Jure Partition: In an undivided coparcenary, all the existing coparceners have a joint share in the property, and till the partition takes place, none of the coparceners can tell the exact amount of share that he owns in the property.

Further, due to the application of the doctrine of survivorship, the interests can keep on fluctuating due to births and deaths of the other coparceners. But, when the community interest is broken

down at the instance of one coparcener or by mutual agreement that the shares are now clearly fixed or demarcated, such type of partition is known as De Jure partition wherein there is no scope of application for Doctrine of Survivorship.

De facto Partition: Unity of possession which signifies the enjoyment of property by the coparceners may even continue after severance of Joint status or division of community interest. The amount of shares in the property might not be fixed but no coparceners reserve the right to claim any property as falling into his exclusive shares. “This breaking up of Unity of Possession is affected by an actual division of property and is called a de facto partition.”

Essentials of a valid partition

It is pertinent to note that a coparcener reserves a right to demand partition at any time without the consent of the other coparceners. Therefore, in order to bring demand for partition the following essentials must be established:-

1. There must be an intention to separate from the Joint Family.
2. There must be a clear, unequivocal and unilateral declaration which conveys the intention to separate from the Joint Family.
3. The intention must be communicated to the Karta or to the other coparcener in his absence.

Effect of Partition

A Partition can lead to severance of property or separation of property in a joint Family. After partition, a person is considered as free from his rights, obligations, duties and responsibilities arising out of a Joint Family. After the partition has happened the fixed number of shares of every existing coparcener gets defined. Moreover, post-partition since the number of shares has been fixed the fluctuations that happen in a family due to births and deaths stops. And the property which has been acquired by the coparcener after the partition will be known as his separate property or self-acquired property.

Partition of coparcenary property

If an intention is expressed to partition the coparcenary property, then each share of coparceners becomes clear and ascertainable. It is pertinent to note that once the share of the coparcener is determined, it ceases to be a coparcenary property. The parties in such an event would not possess the property as joint tenants but they will possess the property as tenants-in-common. Tenancy in common is an arrangement where two or more people share rights in the property.

Various modes of partition

Partition by father

The father under the Hindu Law has superior powers in comparison to the other coparceners wherein by virtue of his rights i.e. ‘**patria potestas**’, he can separate himself from the Joint family¹⁵ and also separate each and every son, including minors by affecting a partition.

Partition by agreement

If all the coparceners dissolve the joint status, it is known as Partition by agreement. The court does not have the power to recognize any partition unless there is an agreement between the parties on mutually agreeable terms.

Partition by Suit

The most common way to express one's intention to separate himself from the joint family property is filing a suit in the court. As soon as the plaintiff expresses his unequivocal intention to get separated in the court, his status in the joint family property comes to an end. However, a decree from the court is required which decides the respective shares of the coparceners. The severance of status takes place from the date of filing such a suit in the court. Both a minor and a major coparcener may approach the court for this purpose.

In the case of **Jingulaiah Subramanyam Naidu v Jinguliah Venkatesulu Naidu**, a partition was sought of the property in the name of the wife of the opposite party claiming that they are joint properties and without making titleholder as the party. Therefore, the court stated that when the partition is sought of a party, it is a mandatory condition to make titleholder as a necessary party.

Partition by Conversion

Conversion to a non-Hindu religion can lead to severance of status of coparcener belonging to the Joint Family. The member who converted into religion would lose his membership of the coparcenary but it will not affect the status of other coparceners.

Partition by Arbitration

In this mode of partition, an agreement is made amongst the coparceners of a joint family in which they appoint an arbitrator to arbitrate and divide the property. Such a partition becomes operative from the date thereof.

Partition by Notice

“The essential element of partition is the intention to separate which must be communicated to other coparceners. Therefore, a partition may come into effect even by notice to the coparceners, whether accompanied by a suit or not.

Right to Demand Partition

As a common rule, every coparcener of a Hindu joint family is permitted to demand partition of the coparcenary/ Hindu joint family property.

1. **Special power of father:** A Hindu father reserves a right to effect a partition between himself and his sons. Despite the express consent or dissent of his sons, he can exercise

this right. Therefore the severance of the property can be done as per the special power given to the father.

2. **Son, Grandson and Great-grandson:** All coparceners, who is major and of sound mind is entitled to demand partition anytime irrespective of whether they are sons, grandsons or great-grandsons. A clear demand made by any coparcener, with or without reasons, is sufficient and the Karta is legally bound to comply with his demand.
3. **Daughter:-**Moreover, daughters, son in a mother's womb, adopted son, son born after void or voidable marriage, an illegitimate son etc. also reserves a right to demand partition.

In the case of **Pachi Krishnamma v. Kumaran**, the court stated that the daughter claimed his share as equal to the son in the partition of joint family property, but she failed to prove her customs which says that a daughter can get an equal share as to the son. But after the amendment of 2005 in Hindu Succession Act, it gave the power that a daughter has the right to ask for partition and can claim an equal share as to the son in the partition of joint family property

4. **Minor coparcener:** The test for partition in case of a minor coparcener is whether the partition is in the benefit or interest of the minor or whether it can cause danger to the interests of the minor person. It is pertinent to note that it's upon the discretion of the court to decide that a particular case falls under the ambit of interests of the minor.

As per the Hindu Law, if at all a minor has an undivided share in a Joint Family the Karta of the Joint family will act as a guardian of the minor. However, when it comes to the right to demand partition by a person, **the rights of the minor and rights of major are similar in nature.**

Reopening of Partition

The Hindu law, after the partition, has made it possible to reopen the partition or revoke the partition. In the cases of Mistake, Absentee Coparcener, Fraud, Son in Womb, Son conceived and born after partition, Disqualified coparceners and the additional property after the partition can be reopened in accordance to the Hindu Law.

1. **Mistake:** If at all the members of the Joint family have left their joint family properties by mistake and are left out of the partition, then the partition can happen later.
2. **Fraud:** Any partition can be revoked which is done because of the fraudulent activities. **For example-** If the assets are fraudulently represented, then the coparcener can claim his right for the reopening of partition.
3. **Disqualified coparcener:** There can be instances wherein due to some technical constraint, the disqualified coparcener can fall short of his share at the time of partition. He reserves a right to get the partition removed by removing the disqualification.
4. **Son in Womb:** If a son is in Womb, and no shares were allotted to him, at the time of partition then later it can be reopened.
5. **Absentee Coparcenary:** Coparcener can reopen the partition if he is absent at the time of partition and no share is allotted to him.

Reunion under Hindu law

The Dayabhaga, Mitakshara and the Madras School of Law are of the opinion that when a member of a Joint Family if once separated, they can only be reunited with father, brother and paternal uncle and not with the other members of the family. It is pertinent to note that only the coparceners who are affecting the joint status and it's only at the instance of a coparcener that a reunion can take place.

Suit for Partition

Suit for partition and Joint Hindu Family

Where there were no accounts of the joint family income nor any substantial proof that has been submitted in order to show that property as alleged was actually purchased by father from the Joint family income and on the other hand, the defendant brother was successful in proving by cogent and necessary evidence that the property in dispute was actually acquired from his own income and resources i.e. without taking any aid from the joint family income, therefore, the suit filed by plaintiff-brother is liable to be dismissed.

Suit for partition and separate possession filed by minor son

When the suit was filed by minor son for partition and there was no dispute with regard to fact that Karta and his son both were entitled to half of the share in the suit property, however, at a later stage it was found that the Karta had sold a portion of the suit property without having the consent and knowledge of the minor son.

Then it was accordingly held that in the event of partition between the parties the portion which is sold already by Karta under sale in question cannot be allotted to his proposed share and as such no prejudice per se would be caused to the minor son due to the sale in question and so impugned order holding a sale in question and so it was accordingly held that the impugned order is valid and it does not require any inference.

Suit for partition filed by widow

If at all a suit is instituted by a partition i.e. a member of a Joint Hindu Family, all the coparceners have to be made parties to it, as defendants. Further, wherein the partition is sought between the branches, then only branches who are representative parties shall be made parties to the suit. It is imperative to note that all the females in the family are entitled to get the share at the time of partition. or a purchaser of a coparcener's vested interest can also be implicated as defendants.

In the case of **Jingulaiah Subramanyam Naidu v. Jinguliah Venkatesulu Naidu**, in the instant case, a partition was sought of the property in the name of the wife of the opposite party and they were accordingly claiming that they were as the joint family proprietaries and therefore no as such titleholder of the instant property has been made. Therefore, the apex court held that when there is a partition of a particular property, the titleholder must be made a necessary party for such property.

Shares to female members at a partition

The allocation of shares to female members in Mitakshara coparcenary partition gives rise to considerable uncertainty and doubt, especially after the passage of new enactments that codify the law of succession, adoption and maintenance.

Most of this is due to partial codification of the Hindu Law. codifying the Hindu law of marriage, succession, adoption and maintenance, the legislature left the law of partition unchanged and even ignored the law of partition to be amended. Under the practice, however, Section 6 of the Hindu Succession Act provides for the retention of a coparcenary under Mitakshara, thus granting succession rights to female members of Class I of the Schedule or to male members who claim through such female members.

Partition at the lifetime of the father

(a) Taking a liberal view that a wife's right to a share on partition during the father's lifetime exists due to her co-ownership in the property of the husband, the wife should be allocated a share on partition during the father's lifetime.

(b) Even if it is to be presumed that it is in place of maintenance, there is no express or implied provision which, during the lifetime of the family, negates its right to such a share on the partition. Such a case cannot be protected by Section 22(2) of the Hindu Adoptions and Maintenance Act, 1956, if it has an impact at all, as it deals only with the maintenance issue subsequent to devolution of property by maintenance.

A paternal grandmother's right to share among grandsons on a partition is not affected.