



GOVERNMENT OF INDIA

**LAW
COMMISSION
OF
INDIA**

**Proposal for amendment of Explanation to
Section 6 of the Hindu Succession Act, 1956 to
include oral partition and family arrangement in
the definition of “partition”.**

Report No. 208

JULY 2008



**LAW COMMISSION OF INDIA
(REPORT NO. 208)**

Proposal for amendment of Explanation to Section 6 of the Hindu Succession Act, 1956 to include oral partition and family arrangement in the definition of “partition”.

Presented to Dr. H. R. Bhardwaj, Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 30th day of July, 2008.

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30 July, 2008

Dear Dr. Bhardwaj ji,

Sub: Proposal to suitably amend the Explanation to section 6 to include oral partition and family arrangement in the definition of “partition”.

I am forwarding herewith the 208th Report of the Law Commission of India on the above subject.

Section 6 of the Hindu Succession Act, 1956 deals with devolution of interest in coparcenary property. The Act was amended by Act 39 of 2005 and a new section 6 was substituted. Sub-section (5) of section 6 and the Explanation thereto read thus:

“(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section, “partition” means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”

The Explanation defines “partition” as any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of court. This definition of “partition” does not include oral partition and family arrangement.

Since the amended Act has failed to include oral partition and family arrangement within the definition of “partition”, which are common and legally accepted modes of division of property under the Hindu Law, the Commission undertook this subject *suo motu*.

The Supreme Court of India in its judgment dated 21.01.1976 in *Kale and Ors. v. Deputy Director of Consolidation and Ors.*, 1976 (3) SCC 119 held that a document which is in the nature of a memorandum of an early family arrangement and which is filed before the court for its information for mutation of names is not compulsorily registrable and therefore can be used in evidence of the family arrangement and is final and binding on the parties. The above view of the Supreme Court has also been clearly enunciated and adroitly adumbrated in a long course of decisions of the Supreme Court and also those of Privy Council and High Courts. The courts have taken a liberal and broad view of the validity of a family settlement and have always tried to uphold it and maintain it. The Commission is of the view that the proposal for suitable amendment in the Explanation to section 6 of the Hindu Succession Act is absolutely necessary in public interest.

The Commission places on record the able assistance rendered by Ms. Hema Sampath, Senior Advocate, Chennai, in preparing this Report.

With kind regards,

Yours sincerely,

(AR. Lakshmanan)

Dr. H.R. Bhardwaj,
Union Minister for Law and Justice,
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LAW COMMISSION OF INDIA

PROPOSAL FOR AMENDMENT OF EXPLANATION TO SECTION 6 OF THE HINDU SUCCESSION ACT, 1956 TO INCLUDE ORAL PARTITION AND FAMILY ARRANGEMENT IN THE DEFINITION OF “PARTITION”.

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1. INTRODUCTION

1.1 The Hindu Succession Act, 1956 (30 of 1956) is a part of the Hindu Code which also includes the Hindu Marriage Act, 1955, the Hindu Adoptions and Maintenance Act, 1956 and the Hindu Minority and Guardianship Act, 1956. These Acts brought about revolutionary changes in the law relating to Hindus. It codified the law relating to marriage, succession, adoption, etc.

1.2 The Hindu Succession Act made a revolutionary change in the law relating to succession, especially for female Hindus. For the first time, a Hindu female could become an absolute owner of property. She could inherit equally with a male counterpart and a widow was also given importance regarding succession of her husband's property as also of her father's property. The Hindu Succession Act was amended in 2005 by the Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005) to provide that the daughter of a coparcener in a joint Hindu family governed by the *Mitakshara* Law shall by birth become a coparcener in her own right in the same manner as the son, having the same rights and liabilities in respect of the said property as that of a son.

1.3 Section 6 of Hindu Succession Act deals with devolution of interest in coparcenary property. Section 6, before its substitution by Act 39 of 2005, read as under:

6. *Devolution of interest in coparcenary property.* – “When a male Hindu dies after the commencement of this Act, having at the time of his death an interest in a *Mitakshara* coparcenary property, his interest in the property shall devolve by survivorship upon the surviving members of the coparcenary and not in accordance with this Act:

Provided that, if the deceased had left him surviving a female relative specified in Class I of the Schedule or a male relative specified in that class who claims through such female relative, the interest of the deceased in the *Mitakshara* coparcenary property shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship.

Explanation 1.-.....

Explanation 2.-.....”

1.4 New Section 6 of the Hindu Succession Act is as under:

6. *Devolution of interest in coparcenary property.* – “(1) On and from the commencement of the Hindu Succession (Amendment) Act, 2005, in a Joint Hindu family governed by the *Mitakshara* law, the daughter of a coparcener shall,-

- (a) by birth become a coparcener in her own right in the same manner as the son;
- (b) have the same rights in the coparcenary property as she would have had if she had been a son;

(c) be subject to the same liabilities in respect of the said coparcenary property as that of a son,
and any reference to a Hindu *Mitakshara* coparcener shall be deemed to include a reference to a daughter of a coparcener:

Provided that nothing contained in this sub-section shall affect or invalidate any disposition or alienation including any partition or testamentary disposition of property which had taken place before the 20th day of December, 2004.

(2) Any property to which a female Hindu becomes entitled by virtue of sub-section (1) shall be held by her with the incidents of coparcenary ownership and shall be regarded, notwithstanding anything contained in this Act or any other law for the time being in force, as property capable of being disposed of by her by testamentary disposition.

(3) Where a Hindu dies after the commencement of the Hindu Succession (Amendment) Act, 2005, his interest in the property of a Joint Hindu family governed by the *Mitakshara* law, shall devolve by testamentary or intestate succession, as the case may be, under this Act and not by survivorship, and the coparcenary property shall be deemed to have been divided as if a partition had taken place and,-

- (a) the daughter is allotted the same share as is allotted to a son;
- (b) the share of the pre-deceased son or a pre-deceased daughter, as they would have got had they been alive at the time of partition, shall be allotted to the surviving child of such pre-deceased son or of such pre-deceased daughter; and

- (c) the share of the pre-deceased child of a pre-deceased son or of a pre-deceased daughter, as such child would have got had he or she been alive at the time of the partition, shall be allotted to the child of such pre-deceased child of the pre-deceased son or a pre-deceased daughter, as the case may be.

Explanation.- For the purposes of this sub-section, the interest of a Hindu *Mitakshara* coparcener shall be deemed to be the share in the property that would have been allotted to him if a partition of the property had taken place immediately before his death, irrespective of whether he was entitled to claim partition or not.

- (4) After the commencement of the Hindu Succession (Amendment) Act, 2005, no court shall recognise any right to proceed against a son, grandson or great-grandson for the recovery of any debt due from his father, grandfather or great-grandfather solely on the ground of the pious obligation under the Hindu law, of such son, grandson or great-grandson to discharge any such debt:

Provided that in the case of any debt contracted before the commencement of the Hindu Succession (Amendment) Act, 2005, nothing contained in this sub-section shall affect-

- (a) the right of any creditor to proceed against the son, grandson or great-grandson, as the case may be; or
- (b) any alienation made in respect of or in satisfaction of, any such debt, and any such right or alienation shall be enforceable under the rule of pious obligation in the same manner and to the same extent as it would have been enforceable as if the

Hindu Succession (Amendment) Act, 2005 had not been enacted.

Explanation.- For the purposes of clause (a), the expression "son", "grandson" or "great-grandson" shall be deemed to refer to the son, grandson or great-grandson, as the case may be, who was born or adopted prior to the commencement of the Hindu Succession (Amendment) Act, 2005.

(5) Nothing contained in this section shall apply to a partition, which has been effected before the 20th day of December, 2004.

Explanation.- For the purposes of this section, "partition" means any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 (16 of 1908) or partition effected by a decree of a court.”

1.5 A daughter of a coparcener became equal to a son and got equal rights in the coparcenary property as a son.

1.6 The proviso to Section 6(1) protects any disposition or alienation including any partition or testamentary disposition of property which had taken place before 20th December, 2004.

1.7 The Explanation appended after sub-section (5) defines “partition” as any partition made by execution of a deed of partition duly registered under the Registration Act, 1908 or partition effected by a decree of court.

1.8 The Act has failed to include oral partition and family arrangement within the definition of “partition”, which are common and legally accepted modes of division of property under the Hindu Law.

2. JUDICIAL VIEW

2.1 The Supreme Court of India in its judgment dated 21.01.1976 in *Kale and Ors. v. Deputy Director of Consolidation and Ors.*, 1976 (3) SCC 119, while dealing with a memorandum of family arrangement through family settlement, held that the family arrangements are governed by a special equity peculiar to themselves and that the family arrangement may have been oral in which case no registration is necessary and that the registration would be necessary only if the terms of the family arrangement are reduced into writing.

2.2 The Supreme Court has observed: -

“By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

“The object of the arrangement is to protect the family from long drawn litigation or perpetual strifes which mar the unity and solidarity of the family and create hatred and bad blood between the various members of the family. It promotes social justice through wider distribution of wealth. Family therefore has to be construed widely. It is not confined only to people having legal title to the property.

“Courts lean in favour of family arrangements. Technical or trivial grounds are overlooked. Rule of estoppel is pressed into service to prevent unsettling of a settled dispute.

“Family arrangement may be even oral in which case no registration is necessary. Registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between the document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable.

“So a document which was no more than a memorandum of what had been agreed to did not require registration.

“Hence a document which is in the nature of a memorandum of an earlier family arrangement and which is filed before the court for its information for mutation of names is not compulsorily registrable and therefore can be used in evidence of the family arrangement and is final and is binding on the parties.

“Even if a family arrangement which required registration was not registered it would operate as a complete estoppel against the parties who have taken advantage of the family arrangement.

“Before dealing with the respective contentions put forward by the parties, we would like to discuss in general the effect and value of family arrangements entered into between the parties with a view to resolving disputes once for all. By virtue of a family settlement or arrangement members of a family descending from a common ancestor or a near relation seek to sink their differences and disputes, settle and resolve their conflicting claims or disputed titles once for all in order to buy peace of mind and bring about complete harmony and goodwill in the family. The family arrangements are governed by a special equity peculiar to themselves and would be enforced if honestly made. In this connection, Kerr in his valuable treatise *Kerr on Fraud* at p. 364 makes the following pertinent observations regarding the nature of the family arrangement which may be extracted thus:

The principles which apply to the case of ordinary compromise between strangers do not equally apply to the case of compromises in the nature of family arrangements. Family arrangements are governed by a special equity peculiar to themselves, and will be enforced if honestly made, although they have not been meant as a compromise, but have

proceeded from an error of all parties, originating in mistake or ignorance of fact as to what their rights actually are, or of the points on which their rights actually depend.

“The law in England on this point is almost the same. In *Halsbury's Laws of England*, Vol. 17, Third Edition, at pp. 215-216, the following apt observations regarding the essentials of the family settlement and the principles governing the existence of the same are made:

A family arrangement is an agreement between members of the same family, intended to be generally and reasonably for the benefit of the family either by compromising doubtful or disputed rights or by preserving the family property or the peace and security of the family by avoiding litigation or by saving its honour.

The agreement may be implied from a long course of dealing, but it is more usual to embody or to effectuate the agreement in a deed to which the term "family arrangement" is applied.

Family arrangements are governed by principles which are not applicable to dealings between strangers. The court, when deciding the rights of parties under family arrangements or claims to upset such arrangements, considers what in the broadest view of the matter is most for the interest of families, and has regard to considerations which, in dealing with transactions between persons not members of the same family, would not be taken into account. Matters which would be fatal to the validity of similar transactions between strangers are not objections to the binding effect of family arrangements.”

2.3 The principles indicated above have been clearly enunciated and adroitly adumbrated in a long course of decisions of the Apex Court as also those of the Privy Council and High Courts in the following cases:

Khunni Lal v. Gobind Krishna Narain, ILR 33 All 356;
Mt. Hiran Bibi v. Mt. Sohan Bibi, AIR 1914 PC 44;
Sahu Madho Das v. Mukand Ram, AIR 1955 SC 481;
Ram Charan Das v. Girja Nandini Devi, AIR 1966 SC 323;
Tek Bahadur Bhujil v. Debi Singh Bhujil, AIR 1966 SC 292;
Maturi Pullaiah v. Maturi Narasimham, AIR 1966 SC 1836;
Krishna Beharilal v. Gulabchand, 1971 (1) SCC 837;
S. Shanmugam Pillai v. K. Shanmugam Pillai, 1973 (2) SCC 312.

2.4 Thus, it would appear from a review of the decisions (supra), that the courts have taken a very liberal and broad view of the validity of the family settlement and have always tried to uphold it and maintain it. The central idea in the approach made by the courts is that if by consent of parties, the matter has been settled, it should not be allowed to be reopened by the parties to the agreement on frivolous or untenable grounds.

3. RECOMMENDATION

3.1 Oral partition or family arrangement is an extremely valuable power whereby the peace, happiness and welfare of a family are secured and litigation is avoided. It is specifically helpful in the case of illiterate members of a family or who have no means to bear expenditure of legal process/advice etc.

3.2 By the 2005 amendment in the Hindu Succession Act, oral partition and family arrangement which had been effected prior to the enactment would be set at naught. Hence, the Commission proposes a suitable amendment in the Explanation to section 6 of the Hindu Succession Act, 1956 to include oral partition and family arrangement in the definition of “partition”.

3.3 We recommend accordingly.

(Dr. Justice AR. Lakshmanan)
Chairman

(Dr. Brahm A. Agrawal)
Member-Secretary

Dated: July 30, 2008.

