PAPER PRESENTATION SUBMITTED BY

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ON THE TOPICS

SESSIONS-II & III:

Partition Suits:

(i) Persons eligible to seek partition under Hindu Succession Act 1956.

(ii) Nature of property liable for partition with reference to coparcenary.

(iii) Status of third party purchaser

(iv) Preliminary, Final decree

(v) Mesne profits

SESSION No. II & III

A PRESENTATION ON "PARTITION SUITS"

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The following topics are covered in the presentation:

(I) Persons eligible to seek partition under Hindu Succession Act 1956.

(II) Nature of Property liable for partition with reference to coparcenary.

(III) Status of third-party purchaser.

(IV) Preliminary decree and Final decree.

(V) Mesne profits.

TOPIC-I

I) Persons eligible to seek partition under Hindu Succession Act 1956

INTRODUCTION:

Partition is defined as the division of a property into two or more parts. Partition under Hindu law is the division of a joint Hindu family's property in order to confer separate status on the undivided coparceners. It is important to remember that in a Joint family with only one coparcener, no partition is feasible. A coparcener is someone who shares an estate with others as a co-heir. According to Webster's dictionary, the word partition means- *"a separation by a court of real estate owned jointly into two or more separately owned parcels, so that each of the former joint owners may enjoy having his or her own share in the estate."* In common parlance, partition is division of joint family property within two or more parties.

Under Hindu law, the notion of a coparcener is an integral aspect of joint family property, each coparcener owns an equal share of the Joint Hindu Family's property, and each retains an inherent title to the land, when

a Hindu joint family agrees to divide their property, their united identity as a family is dissolved. However, in order to establish a condition of jointness among the coparceners in a family, at least two coparceners must be present in the family.

The common ancestor and all of his lineal male descendants up to any generation, as well as the common ancestor’s wife or wives (or widows) and unmarried daughters of the lineal male descendants, make up a Hindu joint family.

The karta or manager is a very significant figure in the Hindu joint family. Karta is the family’s oldest male member. He is the Patriarch of Hinduism. Only a coparcener has the ability to become Karta.

A coparcenary is a small group of people who live together in a joint family. It is entirely made up of male members, although not incorporated, a Hindu coparcenary is a legal entity. A coparcenary is made up of four generations, including the property’s last male holder. The family’s senior member is the last male possessor of the property.

As per Hindu law, every coparcener of a joint Hindu family is entitled to demand partition of the coparcenary property. However, every coparcener does not have an unqualified and unrestricted right for an enforcement of partition. The Hindu Succession Act of 1956 marks a pivotal milestone in India's legal framework, particularly concerning property rights among Hindu families, one of the significant provisions of this act pertains to the right to seek partition, partition allows individuals to claim their rightful share in ancestral or joint family property.

A partition can be defined as a concept of Hindu Law which is regulated by mainly two kinds of schools of thought i.e. the Mitakshara and Dayabhaga schools respectively. Partition is mainly done amongst the members of the Joint Hindu Family, which means a severance of status of the jointness and also the unity of possession among the members of the joint family.

Dayabhaga School:

In a Dayabhaga school, every adult coparcener has the right to demand partition by physical demarcation of his shares, partitioning by limits and metes, for example, must adhere to the demarcation of specified partition shares.

Mitakshara school:

In Mitakshara school, property is not divided into precise shares, and while the elements of a coparcener must be shown, the presence of joint property is not a requirement for pursuing partition, to demand a divorce, all that is required is an unequivocal proclamation of his wish to be divorced from his family.

Partition means:

i) The explanation of sub-section (5) of section of section 6 of Hindu succession Act explains about partition as "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.

ii) According to Black's Law Dictionary,Partition is the division of lands owned by joint tenants, coparceners, or tenants in common into different sections in order for them to possess them in severalty. It refers to the partition of real or personal property among co-owners or co-proprietors.

Concept of Coparcenary Property:

The concept of a coparcenary 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. The shares of the coparceners fluctuates as per the birth and death of

the coparcener in ancestral property, which means that whenever a birth takes place in a joint family, the shares of the coparceners decreases, whereas when the death takes place, the shares of the coparceners increases by its very nature. Traditionally, a Joint Hindu family comprises of male members who are lineal descendants from a common male ancestor, together with their mothers, wives or widows and unmarried daughters. A Hindu coparcenary comprises of a propositus and three lineal descendants. A Joint Hindu family has been described as 'a larger body' consisting of a group of persons united by sapindaship or family relationship. Prior to the year 2005, it included only sons, grandsons and great-grandsons who were holders of joint property.

THE RULE OF FOUR DEGREES:

Though every Coparcenery must have a common ancestor to start with, it is not to be supposed that every extent Coparcenery is limited to four degrees from the common ancestor. A member of a joint family may be removed more than four degrees from the common ancestor (original holder of Coparcenery property), and yet he may be a coparcener. It would be depend on the answer to the question, whether he can demand a partition of the Coparcenery property. If he can, he is a coparcener, otherwise, not. The rule is that partition can be demanded by any member of a joint family who is not removed more than four degrees from the last holder, however remote he may be from the common ancestor or original holder of the property. When a member of a joint family is removed more than four degrees from the last holder, he cannot demand a partition, and therefore he is not a coparcener. It would mean that if we consider the propositus (original holder) to be the great grandfather, then the great grandfather, grandfather, father, son would be the coparceners and can demand partition. But if the fifth line of descent that is if the son's son were to be born, then such son's son can be called a coparcener and can demand partition only upon the death of the great great grandfather. And such descent of succession would continue upto four generations no matter how far the generation goes from the original holder. But it is important and necessary that such successive line remains within the four degrees of

succession and the fifth line of descent would get a right to be called a coparcener and demand partition only when his first line (link) dies.

Legislative reforms took place in Hindu Succession Act, 1956 post 2005:

A Hindu coparcenary is a body which is narrower than a Hindu Undivided Family. Within the Hindu laws, all the laws and provisions regarding the property and its rights have always been male orientated. They were exclusively framed for the benefit of the men of the family while women were always considered submissive. Before the advent of the Hindu succession Act 1956, people were governed by customary laws which varied from region to region and also differentiated on caste basis. These laws were known for their gender discrimination and diversity in law. The proposed law couldn't be spread throughout the country due to lack of means hence it saw variations in its practice in various regions. This led to different schools of thought and different practices which made the law further complex and off track. The laws commonly faced gender inequality in all practicing regions.

Other laws prior to the Hindu Succession Act, 1956:

The Hindu Law of Inheritance Act, 1929 was the first legislation to bring a woman into the scene of inheritance and its laws. This Act conferred rights of inheritance upon three female heirs' viz. son's daughter, granddaughter, and sister.

The Hindu Women's Right to Property Act, 1937 was landmark legislation conferring ownership rights on women. This law brought about major changes in the then followed customary laws and schools of thought. It also affected coparcenary laws, partition laws and laws of property, inheritance and adoption. It also took into account the rights of widows and divorcees. Prior to this law, there were no codified laws to deal with the problem and disputes were resolved using customary practices. This act was passed after much voicing of discontent over the unsatisfactory condition of women' rights. However, it was by no means enough to achieve the lofty target of gender equality.

HINDU SUCCESSION ACT, 1956:

The Hindu Succession Act, 1956 was focused upon providing equality as stated by Article 14 of the Constitution of India. The idea of the limited estate as propagated by the Hindu Women's Right to Property Act was abolished in 1956 by the introduction of this Act. This Act tried to uplift the position and status of women in society by providing them with the inheritance of share in their father's property. Daughters were declared as legal heirs of their fathers and received the rights of inheritance of a share of the separate property owned by the father through the notional partition. The ancestral property owned by the family would still be legally inherited by the son of the family and the daughter would have no rights over it thereby following the rules of survivorship. This led to the continuity of inequality but at a slower or less diminishing pace.

Amendments within the Hindu law:

It was observed that the legislation made on the topic were not able to serve the purpose of equality and hence required to be modified according to the changing needs of the society. There were further changes made to incorporate daughters within the ambit of property rights but nothing major could be achieved. In 2000, the law commission report suggested reforms with regard to women's right to property. It pointed out all the clauses which supported bias towards the males and suggested significant changes to be made.

The Hindu Succession Amendment Act, 2005

The Hindu Succession Amendment Act 2005 was enacted with the aim of expanding the rights of women and daughters of the family and brings them on par with the male members. It followed the suggestions provided by the law commission report. By the way of this amendment the daughters of the family, whether married or unmarried, gained coparcenary rights with the other entire rights and liabilities equivalent to a son. This now meant that the daughter would also be liable for the debts and losses in addition to

property shares and other rights. Section 6 of this amendment challenged the fundamental principles of Hindu coparcenary law. Through this amendment daughters, both married and unmarried, were given equal rights over the coparcenary as like to the sons of the family. It also provided that the females of the family could now also act as the Karta of the family which they couldn't previous to this law, any reference made to a coparcener would also include daughters equally.

Difference between the rule of succession and rule of survivorship:

The amendment of the Hindu succession act in 2005 brought forth the rule of succession overrules of survivorship. Prior to this amendment, the daughters and other female relatives of the family were only considered as heirs and were entitled to their share of notional partition only after the death of the Karta while all the male members were eligible to acquire their shares even before the Karta's death due to bearing the rights of coparceners, this was the rule of survivorship. The rule basically meant that only sons of the family could inherit property by coparcener rights because they were considered responsible for the further survival of the family name.

Whilst the rule of succession implies that the property would be inherited by the order of birth irrespective of gender. This rule was introduced by the 2005 amendment and thereby included the daughters of the family within the coparcener rights.

Present status:

After the enactment of the 2005 amendment in the Hindu succession Act 1956, there were significant benefits for women in the societal structure. In today's time, the benefits provided have been seen reaping and flourishing for the betterment of society. Now all daughters of the family are coparcenary owners of the family property and own equality of rights and liabilities unlike in the past times when they were dependent on their male counterparts to consider them in their will to be able to yet obtain only a

part of their rights. The option to respectfully avail their rights adds to their solid foundation and provides them with emergency economical backing which helps boost their confidence and potentially more. Women of the family can now own the position of the Kartha or the head of the family thereby breaking all stereotypes. This leads to enhancement of their strength and social worth which is much required in the society.

Types of partition

***1. 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.

***2. 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 coparcener 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.”

3. Partition by Agreement:

This occurs when the co-owners of a property agree to divide it amongst themselves according to their shares.

4. Partition by Family Settlement:

Family settlement is a mode of settling disputes or claims regarding property among family members. It involves an agreement among the members of a family to divide the property in a particular manner.

5. Partition by Suit:

When there is a dispute among co-owners regarding the partition of property and they are unable to reach an agreement, they may approach the court to partition the property through a legal suit.

In the case of **Jingulaiah Subramanyam Naidu v Jinguliah Venkatesulu Naidu**,(15th Februry 2013) 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.

6. 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.

7. Partition by Arbitration:

Instead of going to court, parties may choose to settle their partition disputes through arbitration, where an arbitrator or a panel of arbitrators makes a binding decision.

8. Partial Partition:

In some cases, only a portion of the property is partitioned while the rest remains undivided among the co-owners.

9. Total Partition:

Total partition involves the complete division of the property among the co-owners, leaving no undivided share.

Essentials of a Valid Partition:

Valid partition, also known as a legally effective partition, refers to a partition of property that is recognized and enforceable under the law. To ensure that a partition is valid, certain essential elements must be met.

Agreement among Co-owners:

There must be mutual consent and agreement among all co-owners regarding the partition of the property, without unanimous agreement, the partition may not be valid.

Clear Intention to Partition:

The parties involved must have a clear intention to divide the property and separate their respective shares, this intention should be expressed explicitly, either orally or in writing.

Identification of Shares:

The shares of each co-owner must be clearly identified and demarcated in the partition agreement, this includes specifying the portion of the property allocated to each co-owner.

Compliance with Legal Formalities:

The partition should comply with any legal formalities or requirements prescribed by law, these may include the execution of a partition deed, registration of the partition deed (if required by law), and payment of any applicable stamp duty.

Voluntary Act:

The partition should be a voluntary act undertaken by the co-owners without any coercion, fraud, or undue influence. All parties should enter into the partition agreement willingly and without any external pressure.

No Legal Prohibitions:

The partition should not violate any legal prohibitions or restrictions, for example, certain laws may prohibit the partition of ancestral property in certain circumstances.

Legal Capacity of Parties:

All parties involved in the partition should have the legal capacity to enter into such agreements, this means they must be competent to contract and have the legal authority to dispose of their respective shares in the property.

Recording of Partition:

It is advisable to record the partition agreement in writing, preferably in the form of a partition deed signed by all co-owners. This helps in providing evidence of the partition and avoids future disputes.

(I) Persons eligible to seek partition under Hindu Succession Act 1956:

As per Hindu law, every coparcener of a joint Hindu family is entitled to demand partition of the coparcenary property. However, every coparcener does not have an unqualified and unrestricted right for an enforcement of partition. The following are the persons who are entitled to seek partition,

a) COPARCENERS:

According to Hindu law, both a major and minor coparcener have a right to get a share during the partition irrespective of whether they are demanding a partition as sons, grandsons, or great-grandsons. A coparcener can make a demand for partition anytime with or without reason, keeping in mind that this demand has to be complied upon legally by the Karta of the family. Here, all the coparceners have an undivided interest in the property, and through a partition, the title is divided amongst them, thereby leading to exclusive ownership. In the case of minor, the only condition that has to

be considered for demanding partition is that; the suit for partition has to be filed by a guardian of the minor on behalf of the minor.

The inheritance of property to the legal heirs is performed according to testament or will but if a person dies intestate then the transfer of property to the beneficiaries is performed as per the provisions of the Hindu Succession Act, 1956.

Hindu Succession Act- 1956:

The Hindu Succession Act of 1956, is related to the inheritance and succession of property as well as deals with intestate or unwilled succession. This Act is applicable to all Hindus, Sikhs, Jains, or Buddhists other than those under the jurisdiction of the State of Jammu and Kashmir. This Act is not applicable to people governed by the Special Marriage Act, of 1954. Moreover, it is efficiently applicable to areas of Mitakshara and Dayabhaga schools. Herein, Mitakshara School and Dayabhaga School are two popular schools of the Hindu Joint Family System on which the rules of Hindu personal law depend. Devolution of succession and Devolution by survivorship are the two modes of property devolution, according to the Mitakshara School. The survivorship rule is applicable only to the ancestral property or coparcenary property whereas the succession rule is applicable to the self-acquired property of an individual. Dayabhaga School on the other hand mainly emphasizes the succession rule.

As per Section 2 of this Act, all earlier customs, laws, and rules, applicable to Hindus were abrogated, earlier, the female heirs were not recognized and survivorship rule in coparcenary property was applicable only to the male heirs. Coparcener is the one who shares legal rights for inheriting property, money, and title as well as denotes ‘Joint Heir’ in the Hindu Undivided Family. After the enactment of this Act, if a male dies intestate and only a female heir is left behind then the property would not devolve as per the survivorship rule and would devolve according to the provisions of the Hindu Succession Act. There are four different categories provided by the Act that illustrates the order of succession on the basis of

nearness or closeness of blood including Class I heirs, Class II heirs, Agnates, and Cognates. Moreover, the Hindu Succession Act also provides rights to a child in womb under Section 20. It states that an unborn child in the womb at the time of the death of an intestate and is born alive will possess the same rights to inherit the property of the intestate as he or she would have if born before the death of the intestate.

Apart from this, there are certain disqualifications too which restrict an individual from inheriting the property, under Section 24 of the Act, certain widows who re-marry after the death of their spouse are disqualified to inherit the property as widows. They are mainly classified into three categories including brother's widow, son's widow, and son's son's widow. In addition to this, any person who commits murder or assists in the commission of the murder is disqualified from inheriting the property of the murdered person or any other person as mentioned in Section 25 of the Hindu Succession Act. Moreover, Section 28 of the Act ensures that "No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever." Under the provisions of the Hindu Succession Act, it was clear that only males were coparceners. Here, the question arises whether a daughter is a coparcener or not. This was answered after the 2005 amendment of the Hindu Succession Act, 1956.

Hindu Succession (Amendment) Act, 2005:

On September 9, 2005, the Hindu Succession Act was amended and provided daughters with equal rights to property as sons. Section 6 of the Hindu Succession Act then became a well-established section defining daughters as coparceners by birth, having equal and same rights as well as liabilities as sons. Both sons and daughters come under class I heirs. In addition, this Act also illustrates that a married daughter has the right to seek partition of the coparcenary property which is not restricted by any limitation. If a Hindu male or female dies after the commencement of the

2005 Amendment, the property will devolve by intestate or testamentary succession.

Testamentary succession:

A testamentary succession is where the property is governed by a testament or a will and is passed to the beneficiaries named in it. According to Hindu Law, a Hindu male or female has the right to make a will (valid and legally enforceable) of his/her property either giving an equal share or in favor of anyone. The distribution of property will be as per the provisions of the will, not through the inheritance laws. If the will is not valid then only the laws of inheritance can be implemented for property devolution.

Intestate:

An intestate succession is where a Hindu male or female dies without leaving behind any valid or legally enforceable testament or will, then the property is divided among the legal heirs as per the inheritance laws.

Along with this, Section 3 of the Hindu Succession Act, 1956 was also omitted after the 2005 Amendment, this means the right to seek partition within a house was granted to women. Apart from all these changes, the Hindu Succession (Amendment) Act, of 2005, could not provide a valuable answer to one question, whether a daughter has property rights after the death of her father or not. The following case laws answer the aforementioned question.

In Prakash vs. Phulvati (AIR 2016 SC 769)

In this case, a suit was filed by the respondent in the Trial Court of Belgaum in 1992, seeking partition of her father's property (ancestral and self-acquired) after the death of her father on February 18, 1988. In the suit, the respondent claimed a separate possession of 1/7th and 1/28th share in ancestral property and some other properties respectively. This was partly allowed by the Trial Court and a share was given to the respondent as per the provisions of the Hindu Succession (Amendment) Act, 2005 (effective from September 9, 2005). The respondent approached the

Karnataka High Court challenging the decision of the Trial Court. In an appeal before the Honble High Court, she claimed that as per Section 6(1) of the Amendment Act, she had become a coparcener, therefore, entitled to have an equal share of her father's property as sons. On the contrary, the appellant (respondent's brother) stated that the provisions of the Amendment Act are not applicable in this case because their father died before the commencement of the Amendment Act. Here, the decision was in favor of the respondent; therefore, the appellant approached the Honble Supreme Court and contested that the respondent could only get a share of the self-acquired property of the father. The main issue addressed in the Honble Apex court was whether the provisions of the Amendment were applicable even after the death of the respondent's father before its commencement.

The Honble Supreme Court rejected the contention of the respondent that a daughter becomes a coparcener after her father's death, irrespective of the fact that the date of his death is before the commencement of the 2005 Amendment Act. The respondent also contended that the Amendment Act was a social legislation, therefore, should be applied retrospectively which was not accepted by the bench (Justice Anil R. Dave and Justice Adarsh Kumar Goel). **The Honble Apex Court said that the legislature has mentioned that the 2005 Act is applicable from September 9, 2005, thus it cannot be applied retrospectively.** Through this judgment, it has been determined that "if both father and daughter were alive on September 9, 2005, then the provisions of the Amendment Act came into effect."

Danamma @ Suman Surpur & Anr. vs. Amar & Ors. (AIR 2018 SC 721)

The case was filed by the appellants against the judgment and order passed by the Trial Court and Honble High Court which refused to give coparcener rights to them because they were born before the enactment of the Hindu Succession Act. In this case, the appellants were the daughters of

Mr. Gurulingappa Savadi and Sumitrai. In 2001, Mr. Gurulingappa Savadi died leaving behind his four children (two daughters and two sons) and widow. In 2002, the respondents (Arun Kumar and Vijay) filed a suit for separate possession of the joint family property. The respondents denied giving any share to the daughters (appellants) as they were born prior to the enactment of the Succession Act as well as dowry was given to them at the time of their marriages, therefore, no share of the property was provided to them. The Trial Court stated that the widow and two sons of the deceased are the coparceners, therefore, rejecting the claims of the appellants. The same was upheld by the Honble High Court in the year 2012. Further, the appellants approached the Honble Supreme Court and filed a Special Leave Petition challenging the decision of both the Honble High Court and the Trial Court.

The Honble Supreme Court bench comprising Justices A.K. Sikri and Ashok Bhushan gave the judgment in this case, after hearing both the respondents and appellants, the bench opined that **without any doubt, Section 6 of the 2005 Amendment ensures the same property rights and liabilities to daughters and sons of either living or dead parents.** In this context, the Hon'ble Supreme Court said that after the death of the propositus (Mr. Gurulingappa Savadi) of the joint family, the property is equally divided among his widow and four children. The bench ordered that both appellants would be entitled to 1/5th share of the property each. Hence, the decision was in the favor of the appellants (daughters).

Vineeta Sharma vs Rakesh Kumar (AIR 2020 SC 3717)

It is a landmark judgment delivered by a three-judge bench of the Honble Supreme Court stating that **"Daughters possess equal property rights as coparceners as of sons under the Hindu Succession Act, irrespective of the enactment of the 2005 amendment." It also stated that the daughters are coparceners by birth and possess all the rights and liabilities like sons.** The primary question answered in this

judgment was regarding the interpretation of Section 6 of the Hindu Succession Act, 1956, after the amendment of the Hindu Succession Act in 2005. **In this case, the verdicts of Prakash vs. Phulvati and Danamma @ Suman Surpur & Anr. vs. Amar & Ors were overruled.** Conflicting verdicts were given in these cases by two-judge benches regarding the daughter's right as a coparcener under the Hindu Succession Act and Amendment Act. In the Vineeta Sharma case, a three-judge bench of the Supreme Court was convened consisting of Justice M.R. Shah, Justice Arun Mishra, and Justice S. Abdul Nazeer.

The case was filed by the appellant, Ms. Vineeta Sharma, against her two brothers (Mr. Satyendra Sharma and Rakesh Sharma) and their mother (respondents). The appellant's father died in the year 1999 leaving behind his widow and three sons (one unmarried son died in 2001). 14th share of the father's property was claimed by the appellant as daughter which was not accepted by the respondents. They stated that she (Vineeta Sharma) was no longer a part of the joint Hindu family after her marriage. The Hon'ble Delhi Court dismissed the appeal and said that provisions of the 2005 Amendment were not applicable here as their father died before the commencement of the Hindu Succession Amendment Act, 2005. After hearing the contentions, the Honble Supreme Court bench overruled the verdicts of Prakash vs. Phulvati and Danamma @ Suman Surpur & Anr. vs. Amar & Ors. The bench stated that Hindu Succession Amendment Act gives a daughter the right to a father's property from birth whether born after or before the commencement of the Amendment Act. Also, it highlighted that the daughter's father doesn't need to be alive at the time of commencement to entitle property rights. At last, it was determined that "Daughters are coparceners by birth and have equal liabilities as of sons in either case, born after or before the enactment of Hindu Succession Amendment Act or father is alive or dead after or before the commencement of Hindu Succession Amendment Act." **The Honble Apex Court further held that the Hindu Succession (Amendment) Act, 2005 will have a retrospective effect. The section was amended to align with the constitutionality belief of**

gender equality. The daughter of the coparcener by birth shall become a coparcener in the same manner as the son. The 2005 amendment intended to give daughters the same rights as son in the coparcenary property.

In **Arunachala Gounder VS Ponnuswamy reported in (2022) 11 SCC 520,** the Hon'ble Supreme Court of India has held that even in cases prior to enactment of the Hindu Succession Act, 1956 (1956 Act), if a Hindu male dies intestate leaving behind self-acquired property, such self acquired property would devolve by inheritance and its devolution shall not be by way of survivorship. Further,the daughter of such a Hindu male would be entitled to inherit such self-acquired property.

Prashant Kumar Sahoo & ors v/s Charulata Sahoo & ors versus Charulatha Sahu and others (29th March 2023)

Rights of the parties after the amendment of 2005 to the Hindu Marriage Act.

After the amendment of 2005 to the Hindu Marriage Act daughters have equal rights over the coparcenary property as the son. **The daughters are equal coparceners to the ancestral property and share equal liabilities as the son.** since the suit was pending during and after the amendment and the final order was not passed the supreme court held that the parties could seek the benefits of the amended law if it applies to them and the preliminary decree can be varied in the final proceedings.

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. The minor reserves a right to claim partition just like an adult coparcener by filing a suit through his guardian. But, if it is found that the suit is not beneficial to the minor the suit can be dismissed. Therefore, it is the duty of the court to serve justice to the minor by protecting their rights and interests. In the case of minor, the only condition that has to be considered for demanding partition is that; the suit for partition has to be filed by a guardian of the minor on behalf of the minor.

b) FEMALE MEMBERS:

Female members in this regard comprise of three types of females, i.e., the father's wife, the widowed mother, and the paternal grandmother. Generally, the female sharers do not have a right to ask for a partition, but they can get their share when the joint family property is actually being divided after partition. As far as the father's wife is concerned, when a partition occurs between a father and his sons, the wife is entitled to get an equal share to that of a son irrespective of the fact that whether the partition has been affected by the father himself or it had occurred at the instance of a son. Due to some reason, if the father passes away without effecting a partition, then according to the doctrine of survivorship, the entire property will be taken by the son, and the wife will not get anything. On the other hand, if we talk about a widowed mother, she is entitled to get an equal share to that of the brother when a partition actually takes place after the death of the father, whereas a paternal grandmother gets an equal share as that of a grandson when a partition occurs after the death of her sons.

c) DISQUALIFIED COPARCENER:

Any coparcener who is incapable of enjoying and managing the property due to any deformities like incurable blindness, lunacy, leprosy, etc from the time of the birth would be considered disqualified and will be dis-entitled to get a share during partition, but, if in a joint family, a member has no congenital disqualification, then he would acquire a right by birth, in

the coparcenary property, and thus, if he becomes insane subsequently over time, then he would not be deprived of his interest.

d) SONS OR DAUGHTERS BORN AFTER PARTITION:

After-born sons and daughters are usually categorized under two heads; firstly, those who are born or conceived after partition, and secondly, the sons and daughters born after partition but begotten before the partition. In other words, if a son or daughter is said to be in her mother's womb, then he would be treated in existence in the eyes of the law and can re-open the partition to receive an equal share along with his/her siblings. On the other hand, if a son or a daughter is begotten or born after partition, and if his father has taken his share in the property and has got separated from the other children, then also the newborn son or daughter would be entitled to his father's share from the partition, but here, in this case, he/she wouldn't be entitled to re-open the partition for his separate property.

e) CHILDREN BORN OF A VOID OR VOIDABLE MARRIAGE:

A male child born of a void or voidable marriage is considered to be the legitimate child of his parents and, thus, is entitled to inherit their separate property as per the law. He cannot inherit the property of parent's relatives. As far as statutory legitimacy is concerned, the male child can be treated as a coparcener for the properties held by the father. He does not have a right to ask for partition during the putative father's lifetime. Furthermore, he can ask for partition only after the father's death. So, it can be concluded that the rights of a son born of a void or voidable marriage are much better than an illegitimate child but are inferior to those of a child born of a valid marriage.

In ***Revanasiddappa and another versus Mallikarjun and others, 2023 SCC OnLine SC 1087,*** a three-judge bench of the Hon'ble Supreme Court of India led by the Chief Justice of India, Dr. Dhananjaya Y Chandrachud, put a quietus to the issue surrounding inheritance rights of an illegitimate child to the parents'

property whose marriage is null and void under Section 11 of the Hindu Marriage Act, 1955 ("**HMA**") or voidable under Section 12 of HMA. The Hon'ble Court held that, **a child of an 'invalid marriage' is entitled to a share in the parents' property, both self-acquired and ancestral, after ascertaining the rights of such parent as per the mandate prescribed under the Hindu Succession Act, 1956 ("HSA"). Such child, however, does not become a coparcener in the Hindu Mitakshara Joint Family.**

f) Children born out of Live-in-relationship :

Live in relationships as an emerging concept is largely an untapped area with a lot of loopholes. Further, the status of a child born out of wedlock is termed as 'illegitimate' and is met with backlash from society at large. This case deals with whether a child born in a live-in relationship can claim a share in ancestral property as well as the status of the relationship between two people co-habiting for a few years.

In ***Bharatha Matha v. R. Vijaya Renganathan AIR 2010 SC 2685***, the Honble court held that,

> "A child born from a void or voidable marriage according to the Act is not entitled to claim inheritance in ancestral coparcenary property but can only claim a share in self-acquired properties of the parents." ….. The court has discussed in detail on the status of legitimacy of the children born out of the live-in relationship under Section 16 of the Hindu Marriage Act which is a progressive step towards the social security of children by bringing in reforms for them upon the question of their legitimacy. Children are often ostracized when they are illegitimate and born out of wedlock which is no fault of their own. But society has always held a notion of evil around illegitimate children and this law has ensured the status of legitimacy of a child.

In a recent verdict, the Hon'ble Supreme Court has held that even children born out of a live-in relationship have the coparcenary right in the ancestral property. **Kattukandi Edathil Krishnan & Anr vs**

Kattukandi Edathil Valsan & Ors. **2022 SCC OnLine SC 737** the Hon'ble Supreme Court has held that,

> "even children born out of a live-in relationship have the coparcenary right in the ancestral property." The two judge bench comprising of Justices S Abdul Nazeer and Vikram Nath while ruling over an appeal filed against the Honble Kerala High Court came to this conclusion. Technically, live-in relationships are based on long cohabitation and performance of the duties as performed by husband and wife. The law has a presumption in favour of marriage and not concubinage; therefore, live-in relationships have an advantage of a long cohabitation which gives a presumption in their favour thus enhancing the claim of legitimacy of the children born out of such relationship.

Although important, this is not the first time the Supreme Court has endorsed the rights of children born through live-in relations. In the case of ***Tulsa & Ors vs Durghatiya & Ors***, **(AIR 2008 SC 1193)**, the Hon'ble Supreme Court laid down the status of children born through live-in relationships. For a child to claim the status of a legitimate child born through live-in relationships, the partners must have resided under a roof for a long period. Such a child can then claim the right over ancestral property. This case has endorsed the long cohabitation point.

g) ADOPTED SON:

According to the present scenario, an adopted son can become a member of the joint family through a valid adoption. This change was brought after the passing of Hindu Adoptions and Maintenance Act, 1956, where all the laws related to adoption were clarified and modified. Now, post-adoption, an adopted son is considered dead for the natural family and is presumed to be born in the adoptive family, meaning thereby, he acquires a right by birth in the joint family property from the date of adoption. Therefore, he is entitled to demand a partition in joint family property and have a right to an equal share to that of the adoptive father.

In **Anumolu Nageswara Rao Vs. A.V.R.L. Narasimha Rao**,(27th June 2023) the Hon'ble Court held that,

> *"only if a partition has taken place before the adoption and property is allotted to his share or self acquired, obtained by will, inherited from his natural father or other ancestor or collateral which is not coparcenary property held along with other coparceners and property held by him as sole surviving coparcener, he carries that property with him to the adoptive family with corresponding obligations."*

h) ILLEGITIMATE SON:

Under Hindu law, an illegitimate son's right to get a share during the time of partition depends upon the caste to which he belongs to. Presently, an illegitimate son cannot inherit from the father, but he can inherit from his mother. As far as three castes are concerned, *viz.* Brahmins, Kshatriyas and Vaishyas, an illegitimate son is not regarded as a coparcener under it and do not have any vested interest in the joint Hindu family property, and thus, he is not entitled to demand a partition. However, he is entitled to maintenance out of his father's estate.

EFFECT OF PARTITION OF PROPERTY IN A HINDU JOINT FAMILY

In a joint family, a partition can result in the property being severed or separated. A person's rights, obligations, duties, and responsibilities originating from a Joint Family are regarded to be discharged after partition, following the partition, every current coparcener is assigned a fixed number of shares. The following are some of the repercussions on the parties to the partition:

1. It results in the loss of coparcenary status, every coparcener receives his or her own portion and rights to that part. A person's rights, duties, and responsibilities toward the joint family that existed prior to the partition are no longer applicable.

2. If a separated member dies, his shares pass to his heirs rather than survivorship.

3. An ancestor's business loses its essence and becomes subject to the Partnership Act's provisions, coparceners purchase different firms and are no longer obligated to furnish a joint family an account of their business.

4. The father, as the family's Karta, is unable to impose a constraint on pre-partition debts through partial payment or endorsement.

5. In the case of partial division, those who have broken their ties with the joint family lose their prior status.

GROUNDS FOR REOPENING OF PARTITION UNDER HINDU LAW:

Following the Partition, Hindu law has made it permissible to reopen or revoke the partition. According to Hindu Law, in circumstances of Mistake, Absentee Coparcener, Undue Influence, Fraud, Son in the womb, Son conceived and born after partition, Disqualified coparceners, as well and additional property after division, the partition might be reopened.

a) Mistake:

If any members of the Joint family have mistakenly abandoned their joint family properties and are left out of the partition, the partition can take place later.

b) Fraud:

Any partition can be revoked if it is used for dishonest purposes. If the assets are fraudulently represented, for example, the coparcener has the power to reopen the partition.

c) Disqualified Coparcener:

There may be times when the disqualified coparcener falls short of his share at the moment of partition due to a technological constraint. He retains the right to have the partition removed and the disqualification lifted.

d) Son in Womb:

If a son is in the womb at the time of partition and no shares were awarded to him, the partition can be reopened later.

e) Adopted Son:

If the widow of a coparcener adopts a son after the partition, the adopted son is allowed to reopen the partition, under the Hindu Adoptions and Maintenance Act 1956, such adoptions are traced back to the date of the deceased husband's death, and the adopted son can reopen the partition.

f) Absentee Coparcener:

If a coparcener is absent at the time of partition and no share is allocated to him, he might reopen the partition.

g) Minor Coparcener:

After reaching majority, a minor Coparcener might request that the partition be reopened if he was not allocated his share at the time of partition. It usually occurs when the partition was unequal, unfair, or adverse to the minor's interests.

REUNION OR REVOCATION OF PARTITION UNDER HINDU LAW

If any member of the family wants to reunite and re-join their respective estate portions, this is a very uncommon practice. It is feasible for the coparceners to reconnect after a total division by undoing the previous partition among themselves. Only those who were involved in the original partition are eligible for a reunion. If a Hindu joint family splits up, the family or any of its members may elect to reconnect as a Hindu joint family.

The following are the prerequisites for a legal Hindu Law reunion:

1. Only brother, father, and paternal uncle can participate in the partition reunion.

2. They can hold a partition reunion with the members who were involved in the partition.

3. Since reunion is more than just an agreement to live together as tenants in common, there must be a connection between estate and property reunion.

The objective of the reunion is to bring all of the coparceners back together. Reunion confers a right on all reuniting family members in the joint family properties that are the subject of partition among them, to the degree that they have not been dissipated prior to the union.

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.

Moreover, it was further held that if at all any family member were living in the same premises, there could not be any presumption or any inference with regard to the joint family nucleus so far as income is concerned until and unless it is proved in accordance with any cogent legal evidence.

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***,(15th Februry 2013) 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 proprieties 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.

Oral partition in a joint Hindu Family:

It is pertinent to note that, where there was an oral partition in the joint Hindu family and the land was duly partitioned among the father and his sons and land as also recorded in the revenue papers accordingly, thereafter, if the father had the father has accordingly chosen to reside with elder son who is taking care of father in terms of food and agriculture, it cannot be stated that there was a reunion of the family as it was only a

pious duty and obligation of the elder son or any other son of the family to take care of the old father. Therefore, when the father was taken care by the elder son, the land which fell into the share of the father was taken care by the elder son, and the land which fell into the share of the father by itself cannot be treated as an incidence of reunion. It is imperative that there must be an agreement which is specific or implied in nature between the parties which can also be gathered from the given circumstances. And the burden to prove the reunion lies on the person who claims reunion of the partitioned family. Therefore, mere residing or providing food and taking care of the lands of the old age father is not bound to be treated as a reunion of the family i.e. to deprive other brothers to succeed property of the father, the consequence on his death will be that all the sons will get an equal number of shares.

EFFECT OF ORAL PARTITION UNDER HINDU LAW:

Oral partition, also known as family arrangement, is a powerful tool for ensuring a family's peace, happiness, and well-being while avoiding litigation. It is especially beneficial in the case of illiterate family members or those who lack the financial means to pay for legal processes/advice, etc. Oral partition and family were changed by legislation to the Hindu Succession Act. As a result, the Commission proposes an appropriate revision to section 6 of the Hindu Succession Act, 1956's Explanation to include oral partition and family arrangement in the definition of "partition".

In ***Ram Charan Sharma v. Suresh Chand Pathak and others*** **(21st February 2000)** the finding was recorded by the Trial court that the deceased had orally partitioned the disputed property equally in favour of the two sons during her lifetime in presence of her husband and sons. However, the husband was claiming one-third share in the disputed property but due to failure on part of the husband i.e. to examine himself before a trial court to state on oath that no partition had taken place during the lifetime of his wife, it was duly held that husband would not be entitled to get one-third share of the property that has already been partitioned

because of oral partition is permissible in accordance with the Hindu Law. Moreover, in the same case itself, it was observed that the deceased had orally partitioned the property in dispute equally in favour of the two sons during her lifetime in presence of her husband and sons, however, husband's claim for the one-third share in the property in dispute was rejected in absence of a separate suit or a counterclaim by a husband seeking a decree for same from the Trial Court with the requisite court-fee, therefore, the husband was held not entitled to prefer an appeal against the partition decree in favour of son. In a case wherein it was not disputed that the suit property was a joint family property and the document in respect of the partition came into existence after the commencement of oral partition had already taken place, therefore the aforesaid document would neither require requisites of stamp or registration. If at all there is an oral partition, the oral partition itself creates a vested interest in that specific property and not the document which comes into existence later the document can be used for proving the severance of status.

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. A partition claim is filed and the husband or son's death happens when the suit is pending

(a) If a preliminary decree has been passed in the partition dispute, she will be entitled to both the shares i.e. share on the partition as well as the inheritance.

(b) Where succession opens after a partition suit is introduced but before the preliminary decree is passed, the issue should be considered as open. Moreover, the most preferable point of view would be that she is entitled to the share.

Where a mother or wife receives a share under the Hindu Succession Act on the death of the husband or son and thereafter an actual division among the coparceners takes place

The right of a woman to share in the partition after her father's death was "replaced" by the 1937 Hindu Women's Rights to Property Act. In repealing the Hindu Women's Rights to Property Act of 1956, the Hindu Succession Act cannot be regarded as reviving the mother's right in the absence of any explicit legislative provision to that effect.

The share given to a mother on the partition after the death of the father is in lieu of maintenance. Since the Hindu Adoptions and Maintenance Act codified the law and gave the mother a specific right, the old rule should be considered to have been abrogated if it remains.

CONCLUSION:

Partition under Hindu law is a concept that is guided primarily by two modes of thought, Mitakshara and Dayabhaga. Partition in a Hindu joint family means that the status of jointness, ownership and solidarity among the family members is broken. The division can take place in a variety of ways, including Conversion, Notification, Will, Arbitration, Agreement, and Suit etc. Thereby we also discussed parties eligible for Partition including women and adopted children, as well as grounds for disqualification, along with effects of partition. Also, the grounds for reopening of partition have also been discussed in the paper along with liabilities that has to be taken care of before Partition.

The partition under Hindu Law may occur by stripes or by branch in the Mitakshara school; however, in the Dayabhaga school, Partition occurs simply after the death of the Karta; the Dayabhaga school does not follow any coparcenary ideas. Provision also provides an opportunity for Reunion or Revocation of Partition as well. Hence, the Provisions try to cover various aspects to ensure a fair distribution of property amongst the members of the family including the unborn child, yet the laws have been going through constant amendments to ensure all the lacunas during distribution of property are erased from the provisions of India.

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TOPIC-II

II. Nature of property liable for partition with reference to coparcenery:

In the context of coparcenary under Hindu law, the nature of property liable for partition refers to the type of property that can be divided among coparceners. Coparcenary property typically includes ancestral property and joint family property. Here's an explanation:

CLASSIFICATION OF PROPERTIES UNDER HINDU LAW

The property under Hindu Law can be classified under two heads:

1) Coparcenery property and

2) Separate property.

1) THE COPARCENERY PROPERTY

Coparcenery property means the property which consists of ancestral property and a coparcener would mean a person who shares equally with others in inheritance in the estate of common ancestor. The Hon'ble Apex Court of India between ***Vineeta Sharma V/s Rakesh Sharma & Others*** *(Supra) at Page 34 Para 24* has held as under:

> *"Coparcenary property is the one which is inherited by a Hindu from his father, grandfather, or great grandfather. Property inherited from others is held in his rights and cannot be treated as forming part of the coparcenary. The property in coparcenary is held as joint owners".*

COPARCENERY PROPERTY IS AGAIN DIVISIBLE INTO

(i) Ancestral property and

(ii) Joint family property which is not ancestral.

(i) THE ANCESTRAL PROPERTY

Ancestral property is a species of Coparcenery property. Ancestral property is acquired by unobstructed heritage. The Hon'ble Apex Court of India between ***Shyam Narayan Prasad v. Krishna Prasad,*** **reported in (2018) 7 SCC 646 at page 651 para 12**, defined "Ancestral Property" as 'the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherit it, acquire an interest and the rights attached to such property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. If a Hindu inherits unobstructed heritage i.e., property from his father, it becomes ancestral in his hands as regards his son. In such case, it is said that the son becomes a coparcener with the father as regards the property so inherited, and the Coparcenery consists of the father and the son. However, this does not mean that Coparcenery can consist only of the father and his sons. It is not only the sons, but also the grandsons and great grandsons, who acquire an interest by birth in the Coparcenery property.

The Hon'ble Apex Court of India between ***Rohit Chauhan vs Surinder Singh, reported in (2013) 9 SCC 419 page 423 para 11*** held that on partition the ancestral property comes into the hands of individual persons/coparceners, then it has to be treated as a separate property and such a person shall be entitled to dispose of the Coparcenery property treating it to be his separate property but if a son is subsequently born, the alienation made before the birth cannot be questioned. But, the moment a son is born, the property still intact with such individual, then such property becomes a Coparcenery property and the son would acquire an interest in that and become a coparcener.

The Hon'ble High Court of Karnataka between ***Pushpalatha N.V. Vs. V.P. Padma & Others, reported in ILR 2019 KAR 3205 (DB) at Page* 3220 Para 21**, has held that whenever a partition of ancestral property takes place, the share that a coparcener gets continues to be ancestral if on the date of partition he has a son. Further held that he holds such property as his absolute property if no son exists on the date of partition, but if a son is born subsequently, the ancestral character revives. After commencement of Hindu Succession (Amendment) Act of 2005, the presence of a daughter or birth of a daughter subsequently has the same effect, but her entitlement to a share being a coparcener is subject to the riders found in the amended Section 6.

The Hon'ble Apex Court of India between ***Vineeta Sharma Vs. Rakesh Sharma & Others (Supra) at Page 35 Para 28*** by referring the decisions rendered between Sheela Devi v. Lal Chand, (2006) 8 SCC 581, M. Yogendra & Ors. v. Leelamma N. & Ors., (2009) 15 SCC 184, Smt. Sitabai & Anr. v. Ramchandra, AIR 1970 SC 343 and Dharma Shamrao Agalawe v. Pandurang Miragu Agalwe & Ors., (1988) 2 SCC 126 has held that in case coparcenary property comes to the hands of a 'single person' temporarily, it would be treated as his property, but once a son is born, coparcenary would revive in terms of the Mitakshara law.

(ii) ***JOINT FAMILY PROPERTY WHICH IS NOT ANCESTRAL:***

Joint family property includes property acquired by the joint efforts of the coparceners or property that has been thrown into the common stock of the joint family. It can also include property that is acquired using the income or proceeds from ancestral property or joint family property.

Under coparcenary, each coparcener has a right to seek partition of the coparcenary property. Partition divides the property among the coparceners, giving each coparcener a defined share in the property. However, it's essential to note that not all property owned by a Hindu family is subject to coparcenary rights. Property that is self-acquired by a

coparcener, property received as a gift, or property received under a will is not considered coparcenary property and may not be subject to partition among coparceners unless agreed upon by all parties involved.

Property acquired with the aid of ancestral property and property acquired by individual coparceners without such aid, but treated by them as property of the whole family. There must have been a nucleus of joint family property before an ancestral joint family property can come into existence because the word ancestral connotes descent and hence, preexistence. Where there is ancestral joint family property, every member of the family acquires in it a right by birth which cannot be defeated by individual alienation or disposition of any kind except under certain peculiar circumstances. This is equally true of joint family property, where a sufficient nucleus of the property in the possession of the members of a joint family has come to them from a paternal ancestor, the presumption is that the whole property is ancestral and any member alleging that it is not, will have to prove his self acquisition. Similarly, where property is admitted or proved to be joint family property, which may not have been acquired with the aid of ancestral property, but if the same has been treated by them as the property of the whole family, it is subject to exactly the same legal incidents as the ancestral joint family property.

The legal position is well settled that on mere severance of status of joint family, the character of any joint family property does not change with such severance. It retains the character of joint family property till partition, in ***Bhagwant P. Sulakhe v. Digambar Gopal Sulakhe & Ors*. – AIR 1976 SC 79.**

In general, the entire joint family property is susceptible to partition, but the distinct property of coparceners is not. The existence of joint family property must be proven by a plaintiff seeking partition. Where the existence of a joint family is not in question, however, each coparcener is entitled to an equal portion.

Some properties, however, may be held jointly by two or more coparceners, such as when a coparcenary exists within a coparcenary, and if a general partition occurs, these properties may be divided among these coparceners, but other coparceners may claim a portion in them. Even though the lease may be subject to revocation in certain situations, if the joint family is in possession of property held on a permanent lease, such property is also available for partition. The partition does not apply to impartible estates that are part of a joint family's property.

PROPERTY THROWN INTO COMMON STOCK (DOCTRINE OF BLENDING)

Sometimes, it may so happen that property which was originally separate or self acquired property of a member of joint family is voluntarily thrown by him into common stock with the intention of abandoning all individual claims over such property. If this is done, such property becomes joint family property by operation of doctrine of blending. The act by which a coparcener throws his separate property into the common stock is a unilateral act. As soon as he declares his intention to do so, the property assumes the character of joint family property. However clear intention to waive his separate right must be established and such intention cannot be inferred from the mere fact that he allowed the other members of family to use such property jointly with himself. Acts of generosity or kindness are not to be mistaken for admission of legal obligation. Generally, presumption is against blending of self acquired property with joint family property. The onus of proof is on person who alleges such a blending. It can be concluded that Coparcenery property means and includes (1) ancestral property, (2) acquisitions made by the coparceners with the help of ancestral property, (3) joint acquisitions of the coparceners even without such help provided there was no proof of intention on their part that the property should not be treated as joint family property and (4) separate property of the coparceners thrown into the common stock.

In ***Lakkireddi Chinna Venkata Reddi v. Lakkireddi Lakshmama***, AIR 1963 SC 1601 it was held that

> "Law relating to blending of separate property with joint family property is well-settled. Property separate or self-acquired of a member of a joint Hindu family may be impressed with the character of joint family property if it is voluntarily thrown by the owner into the common stock with the intention of abandoning his separate claim therein: but to establish such abandonment a clear intention to waive separate rights must be established. From the mere fact that other member of the family were allowed to use the property jointly with himself, or that the income of the separate property was utilised out of generosity to support persons whom the holder was not bound to support, or from the failure to maintain separate accounts, abandonment cannot be inferred, for an act of generosity or kindness will not ordinarily be regarded as an admission of a legal obligation."

2) SEPARATE PROPERTY

All property other than Coparcenery or joint family property is separate property. Even if a Hindu is a member of a joint family, he may possess separate property. The term self acquired indicates that the property has been acquired by a coparcener by his own exertion without assistance of family funds. 'Separate' property includes 'Self acquired' property.

TYPES OF SELF-ACQUIRED OR SEPARATE PROPERTIES:

1. Property acquired by own exertion and not by joint labour with other members of family, without detriment of family property.
2. Property inherited by a Hindu from anyone other than his father, grandfather or great-grandfather.

3. Property obtained as his share in partition of a joint family property, provided he has no issue (Issue in family law means children. If children are there, then they would also obtain a right in the property by birth as prior to partition it was part of Joint Family Property. After partition the person along with his sons would constitute a coparcenary).
4. Property devolving upon sole surviving coparcener – no widow in existence who has power to adopt or having child in womb.
5. Property obtained by gift or will.
6. Governmental grants.
7. Joint Family Property lost and subsequently recovered without the help of joint family funds.
8. Gains of learning.
9. Income from separate property.
10. Marriage gifts.
11. Income from Joint Family Property allowed to a person for their maintenance.
12. Benefit of insurance policy–premium paid from Joint Family funds but for benefit of the intended person only.

RIGHTS REGARDING SEPARATE PROPERTY

1. Right to Transfer Self-Acquired Property:

One can transfer self-acquired property to anybody. In the case of ancestral property, all coparceners accrue their share in the property by birth and it's quite difficult to deny anyone their right in their ancestral property.

2. Right to Sell Self-Acquired Property:

The owner of self-acquired property can sell such property whenever he wants to sell but in the case of ancestral property, the consent of all the family members is required and it takes a lot of effort and time, to sell ancestral properties rather than selling the self-acquired property.

Properties Which Are Not Subject To Partition:

Although the general rule is that the entire joint family property is open for partition, certain species of joint family property are by their very nature difficult to split, and such properties cannot be divided. As a result, there are three options for adjusting:

Some of the properties may be enjoyed equally or alternately by the coparceners.

Some of the properties may be allotted to a coparcener's share and its value changed in accordance with the value of the other properties assigned to the other coparceners.

Some of the properties may be sold and the Earnings distributed to other coparceners.

Can living dwellings and places of worship be partitioned?

The court concluded in ***Nirupama Basak v. Baidyanath*** **Pramanick AIR 1985 CAL 406** that in the case of dwelling houses, the attempt should be made to reach an agreement that leaves the house wholly in the hands of one or more coparceners or retained for common use. Similarly, it was held in ***Pramatha Nath Mullick v. Pradyumna Kumar (28th April 1925)*** that family shrines, temples, and idols should be assigned to one coparcener with the liberty of the others to have access to them for the sake of worship, the properties should be kept in turn, in accordance to their share in the property, If the family relies on the offerings for a living, each coparcener would worship and take the gifts in turn. The right of way, as well as other indivisible property, remains in common usage by all coparceners.

Impartible estates:

Property which descends from one person to another because of some custom like Raj or principality.

Dwelling house:

In Ancient times Smritikars believed that dwelling house cannot be partitioned but the modern view do not believe this. Partition of dwelling house will be decreed if insisted but Court will try that dwelling house stays with one or more coparcener but if no agreement is made among them, then the dwelling house will be sold and all the proceeds of sale will be divided among the coparceners.

Family shrines, temples and idols:

These are neither divided nor sold. The possession is given to the senior coparcener or youngest member if this person happens to be the most religious person in the family and giving the liberty to other family members to worship at reasonable times.

Property indivisible by its nature:

Some properties are indivisible because of their nature like animals, furniture, stair cases, wells, ways, passages, utensils and ornaments of a coparcener wife. These things cannot be divided unless we destroy their intrinsic value. These things should be sold and their proceeds divided among coparceners.

Legislative prohibition:

Legislature may also make certain properties as indivisible for some social cause like prevention of fragmentation of holdings, in such cases Court should not only see that the coparcener demanding the partition has the right to make it but it should first clear that whether partition is permitted or prohibited by the Legislature.

<u>Property Available For Partition After Deductions And Provisions</u>:

When the joint family property is divided all the liabilities attached to the property must be cleared:

Debts:

Provisions must be made for the repayment of the joint family debt from the joint family property.

Maintenance:

There are few members in the joint Hindu family which are not coparceners but they are entitled to be maintained and they are:

Unmarried sisters till they are married.

Mother, grandmother.

Disqualified coparceners and their immediate dependents.

Widowed daughters of the deceased coparceners.

Marriage expenses:

When partition Is between father and sons provisions should be made for the marriage of the unmarried daughter of the father.

Performance of the ceremonies:

If a partition is going on among the brothers than the provision of funeral expense has to be made for their mother and provision is to be made of other important ceremonies.

CONCLUSION:

In the context of coparcenary, which typically applies in Hindu joint family systems, the property subject to partition is usually ancestral property or property acquired through ancestral funds. This means property inherited from paternal ancestors, passed down through generations without being divided, or property purchased with funds derived from such ancestral property.

When a partition occurs within a coparcenary, the shares of the coparceners are determined, and each member receives a defined portion of

the joint family property. This partition can be either partial or total, depending on the agreement among the coparceners or as directed by law.

It's important to note that while ancestral property is the primary focus, coparcenary property may also include property acquired through other means, such as gifts or self-acquired property of the coparceners, but the principles of partition may vary depending on the specific legal framework governing coparcenary rights.

In essence, any property that is deemed ancestral or joint family property and is owned by the coparcenary can be subjected to partition among the coparceners, ensuring each member receives their rightful share.

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TOPIC-III

III. STATUS OF THIRD-PARTY PURCHASER:

In a partition under Hindu succession law, the status of a third-party purchaser depends on various factors, including the nature of the property, the rights of the coparceners, and the timing of the purchase. Here's an overview:

Ancestral Property:

If the property being partitioned is ancestral property, the rights of third-party purchasers are limited. Ancestral property is subject to the rights of coparceners, and any sale or transfer of such property by one coparcener without the consent of the others may be voidable at the instance of the other coparceners. Third-party purchasers who acquire ancestral property from a coparcener without the consent of the other coparceners may find their title challenged by the remaining coparceners.

Self-Acquired Property:

If the property being partitioned is self-acquired by one of the coparceners, the rights of third-party purchasers are generally stronger. Self-acquired property is owned outright by the individual and can be freely sold or transferred without the consent of the other coparceners. Third-party purchasers who acquire self-acquired property from a coparcener typically acquire valid title and are not affected by the partition among the coparceners.

Pending Partition Proceedings:

If a third-party purchaser acquires an interest in the property while partition proceedings are pending, their rights may be affected by the outcome of the partition. If the court orders the partition of the property, the interests of the third-party purchaser may be subject to the partition decree.

Bonafide Purchaser for Value:

In some cases, a third-party purchaser who acquires property for valuable consideration and without notice of any defects in the title may be considered a bonafide purchaser for value. Bonafide purchasers for value may have stronger rights against claims from other parties, including coparceners seeking partition.

Overall, the status of a third-party purchaser in a partition under Hindu succession law can be complex and depends on various factors, including the nature of the property, the rights of the coparceners, and the circumstances of the purchase. It's advisable for third-party purchasers to conduct thorough due diligence and seek legal advice to understand their rights and potential liabilities.

There are divergent views on this aspect. One is that a third party cannot claim his independent right or tile in the final decree proceedings, and another is that he can be impleaded in the final decree proceedings.

In so far as the first view is concerned, where the execution involves dispossession of third parties, such claims have to be determined in the applications filed under Rule 58 of Order 21, the Code. The determination of the rights of third parties vis-à-vis the suit schedule properties is not at all in the realm of the partition suits. However, the adjudication that gives rise to a preliminary or final decree cannot at all defeat the rights of a third party as held in **Pillela Jangappa Vs Garlapati Prakasam and others: 2006 SCC OnLine AP 357 : 2006 (4) ALD 454.**

However, he can avail any of the following remedies to protect the title and possession as in ***Aitha Dubba Rajam @ Raju Vs. Aitha Pochaiah & Ors : 2007 (2) ALD 557:*** (1) an ex parte decree can be sought to be set aside to establish the right to the property; (2) causing obstruction of delivery and filing a claim petition to get the right adjudicated; and (3) filing a suit for declaration of ownership of the property.

The Contrary view is concerned the Hon'ble High court of AP held in ***Nima Kaur vs Surjith Singh And Ors. 1997 (5) ALD 185***, a third party can be impleaded in the final decree proceedings on twin grounds: one is that, though the issue as to the settlement deed was raised by the original defendant in the suit, neither its validity nor its effect were decided by the court; and second, a partition suit must be deemed to be pending till a final decree is actually granted.

Similarly, in ***T.Chandrasekhar And Another Vs Sunchu Rajamallu and Others 2015 (1) ALD 454***, the Hon'ble Composite High Court of AP interpreted the provisions of Order 1 Rule 10 and Order 22 Rule 10 of the Code and held that, a party who claims property under an agreement of sale and filed suit for specific performance of the agreement of sale, said to have executed some of the parties in the partition suit, can be impleaded, with due respect, no interest will be devolved under an agreement of sale, except obligation. So, the question of devolution of interest under Order 22 Rule 10 of the Code does not arise. Further, he will not be an alienee as he is the only agreement holder.

In ***Mareddy Venkateswarly Vs. Bondili Laskhmi Bhai and others,*** *the Honble court held in CRP 388 of 2020 on 18th August, 2021*, that,

> "once preliminary decree is passed if the others or third parties shows that their rights are affected by virtue of the preliminary decree, then only, the same can be ordered."

Similarly, in Chidambaranathan's Ramaswami case, Syed Chettiar's Mohiddin's case, case and Swayamprakasam Ramader Appala Narasinga Rao's case stated supra, it was held that, third party can claim independent right or title over the property challenging preliminary decree as discussed at topic 'Whether third party can be added, after Preliminary decree'.

In ***M.V.S. Manikayala Rao v. M. Narasimhaswami, : AIR 1966 SC 470****,* the Hon'ble Supreme Court held that

> *"it is well settled that the purchaser of a coparcerner's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased. His right to possession "would date from the period when a specific allotment was made in his favour"*

Conclusion

The status of a third-party purchaser in a partition suit can be complex and may vary depending on the specific circumstances of the case and the laws of the jurisdiction in which the suit is filed, a third party in a partition suit should be guided by the principles of fairness and ensuring that all relevant parties are given the opportunity to protect their interests. The court should consider the direct interest of the third party in the suit property and whether their presence is necessary for a complete and effective resolution of the partition suit. However, it is also important to avoid unnecessary litigation and ensure that the scope and character of the suit are not unduly changed by the inclusion of third parties. Ultimately, the decision to include or exclude a third party in a partition suit will depend on the specific facts and circumstances of each case and the application of the relevant laws and principles.

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TOPIC-IV

IV. PRELIMINARY AND FINAL DECREE:

A suit for partition when filed generally contains prayer for preliminary decree followed with final decree. The ascertaining of share in the property between the claimant/legal heirs are prima face decided while passing preliminary decree. The final decree therefore may entail ministerial acts only as that may relate to demarcation and for that purpose appointment of Local Commissioner and if the property is not capable of divided *by metes and bounds,* then the auction sale or private sale could be contemplated in the final decree. The partition suit in itself is quite different in its nature and therefore, the provisioning of preliminary decree is made for this purpose, unlike any conventional suits.

The another dimension that emerges is as regards whether the suit shall terminate upon passing of preliminary decree and if it is not so, whether the proceedings thereafter shall be deemed to be a continuous proceedings, or still further, whether any application for seeking pronouncing of final decree shall be required, once preliminary decree is pronounced.

Assuming that any application for seeking pronouncing of final decree shall be required, then the next question shall *ipso facto* arise what will be the limitation period for any such application? In other words, if the application after passing of preliminary decree shall be required for pronouncing final decree, the trap of limitation shall follow. The question therefore arise whether final decree could be dropped on the premise that it was barred by limitation? The endeavour is made herein to unravel the aspect fully and completely.

Conventional wisdom shall suggest that once the rights/shares of the plaintiff had been finally determined by a preliminary decree, there should not be a limitation period for an application for affecting the actual partition/division in accordance with the preliminary decree, as it should be considered to be an application made in a pending suit. Still, the issue of

limitation is often raked up in the context when a preliminary decree is passed in a partition suit. It is contended that a right enures to the plaintiff to apply for a final decree for division of the suit property by metes and bounds; that whenever an application is made to enforce a right or seeking any relief, such application is governed by the law of limitation; that an application for drawing up a final decree would be governed by the residuary Article 137 of Limitation Act, 1963 ('Act' for short) which provides a period of limitation of three years; that as such right to apply accrues on the date of the preliminary decree, any application filed beyond three years from the date of preliminary decree would be barred by limitation.

Section 2(2) of the Code of Civil Procedure deals with decree. It enumerates three types of decrees, one is a preliminary decree, the second is a final decree, and the third is a partly preliminary and partly final decree.

A preliminary decree and a final decree would arise in several suits, such as a decree of recovery of possession and for rent or mesne profits *Under Order 20 Rule 12 of the Code*, decree for specific performance of contract of sale or lease of immovable property *Under Order 20 Rule 12A of the Code*, decree in Administration suit *Under Order 20 Rule 13 of the Code*, decree in Suit for dissolution of partnership *Under Order 20 Rule 15 of the Code*, decree in suit for account between principal and agent *Under Order 20 Rule 16 of the Code*, decree in suit for partition of property or separate possession of share *Under Order 20 Rule 18 of the Code*, etc,

Generally, in a partition suit, there are two stages. The first stage is when the preliminary decree is passed, under which the rights of the parties to the property in question are determined and declared. The second stage is when a final decree is passed, which concludes the proceedings before the Court and the suit is treated to have come to an end for all practical purposes.

The Hon'ble Supreme Court of India in **Shub Karan Bubna alias Shub Karan Prasad Bubna Vs. Sita Saran Bubna and others, (2009) 3 SCC 689,** while considering the concept of final decree in a partition suit, has held that it is different from an application for a final decree in mortgage suit and has mandated that after passing of a preliminary decree in a suit for partition, the proceedings should be continued by the Trial Court till final decree is passed. The relevant observations and directions issued in the said ruling are extracted as follows:

> *"18.3. As the declaration of rights or shares is only the first stage in a suit for partition, a preliminary decree does not have the effect of disposing of the suit. The suit continues to be pending until partition, that is, division by metes and bounds takes place by passing a final decree. An application requesting the court to take necessary steps to draw up a final decree effecting a division in terms of the preliminary decree, is neither an application for execution (falling under Article 136 of the Limitation Act) nor an application seeking a fresh relief (falling under Article 137 of the Limitation Act). It is only a reminder to the court to do its duty to appoint a Commissioner, get a report, and draw a final decree in the pending suit so that the suit is taken to its logical conclusion."*
>
> xxxx
>
> "20. On the other hand, in a partition suit the preliminary decrees only decide a part of the suit and therefore an application for passing a final decree is only an application in a pending suit, seeking further progress. In partition suits, there can be a preliminary decree followed by a final decree, or there can be a decree which is a combination of preliminary decree and final decree or there can be merely a single decree with certain further steps to be taken by the court. In fact, several applications for final decree are permissible in a partition suit. A decree in a partition suit enures to the benefit of all the co-owners and therefore, it is sometimes said that there is really no judgment-debtor in a partition decree.
>
> 21. A preliminary decree for partition only identifies the properties to be subjected to partition, defines and declares the shares/rights of the parties. That part of the prayer relating to actual division by metes and bounds and allotment is left for being completed under the final

decree proceedings. Thus the application for final decree as and when made is considered to be an application in a pending suit for granting the relief of division by metes and bounds.

22. Therefore, the concept of final decree in a partition suit is different from the concept of final decree in a mortgage suit. Consequently an application for a final decree in a mortgage suit is different from an application for final decree in partition suits."
xxxx

"31. Insofar as final decree proceedings are concerned, we see no reason for even legislative intervention. As the provisions of the Code stand at present, initiation of final decree proceedings does not depend upon an application for final decree for initiation (unless the local amendments require the same). As noticed above, the Code does not contemplate filing an application for final decree. **Therefore, when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant.** The mindset should be to expedite the process of dispute resolution."

The Court went into detail regarding the definition of Partition and the conditions pertaining to it. The mere issuance of a preliminary decree does not dispose of the suit. It is only the first stage in a suit of partition. Until the actual division according to metes and bounds of the property, the suit stays pending.

Further, the three judges bench of the Hon'ble Apex Court held in **Kattukandi Edathi Krishnan and Another Vs. Kattukandi Edathil Valsan and Others, 2022 SCC OnLine SC 737**, while reiterating the observations made in the earlier ruling in Shub Karan Bubna (cited supra), has laid down as follows:

"33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule

18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings. In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. **Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings."**

The Honble Court held that no separate petition is needed to be filed for the passing of the final decree.

Preliminary Decree:

It declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions of the decree, which is called a preliminary decree. In other words, determining the shares of the members of the family is a preliminary decree.

Final decree:

Further inquiries are conducted pursuant to the preliminary decree, the rights of the parties are finally determined, and a decree is passed in accordance with such determination, which is the final decree. In other words, pursuant to a preliminary decree, allotting specific properties with metes and bounds is a final decree.

The distinction between preliminary decree and final decree is elaborately discussed by the Hon'ble Apex Court in ***Renu Devi Vs. Mahendra Singh AIR 2003 SC 1608.***

The Hon'ble Court held that the court can amend the Preliminary Decree or pass another Preliminary Decree by redetermine the rights and interests of the parties having regard the change of circumstance in view of

the 2005 amendment. In ***Ganduri Koteswaramma and another Vs. Chakiri Yanadi****… (2011) 9 SCC 788*, where a preliminary decree was passed in a partition suit prior to the coming into effect of the Hindu Succession (Amendment) Act, 2005 and after it came into force, the daughters filed application invoking Section 6 (as amended) for passing another preliminary decree so as to include coparcenery properties in their share, which had been excluded by operation of law existing prior to 2005 Act, the Supreme Court held that the trial Court shall do so and amend the preliminary decree. It observed that the suit for partition is not disposed of by passing of the preliminary decree, that only by a final decree, joint family property is partitioned by metes and bounds, that after passing of a preliminary decree, the suit continues until the final decree is passed, and if in the interregnum events occur necessitating change in shares, the Court can amend the preliminary decree or pass another preliminary decree re-determining the rights and interests of the parties having regard to the changed situation.

Who can file a petition for passing final decree:

(1) Plaintiff to the preliminary decree.

(2) Defendant to the preliminary decree

The reason is that in partition suit every party is in position of the plaintiff as held in ***Manalagirikhaja Mian and Ors. Vs. Chand Bee and Ors.: 2000 (3) ALD 498*****.** In the event that no share is allotted to the defendant, he can take steps to amend/modify the preliminary decree determining his share.

(3) Assignee of decree

An assignee from a party to the suit steps into the shoes and can seek the relief that he, as assignor, could have sought as held in ***Burugupally Shiva Ram Krishna And Others v. Cyrus Investments Ltd., Mumbai and others : 2011 (3) ALD 323*****.**

(4) Legal representative of deceased party:

Where a party/sharer in the preliminary decree dies, his legal heirs can be brought on record.

In the event that the party/sharer dies intestate, his legal heirs under succession will be added, and the case will proceed.

In the event he dies testate, a legatee under the will can be added.

The burden lies on the legatee to prove the will profounded by him in the final decree or other proceedings, as the case may be, as per the provisions of Chapter V of the Indian Evidence Act, 1872, if he asserts any right over the property of the party based on the will(s) after his coming on record as held in ***Naram Bhoomi Reddy (died) Per L.R. Naram Raghunath Reddy Vs Naram Venkat Reddy and another : 2014 (4) ALT 270***

LIMITATION FOR FILING FINAL DECREE PETITION:

The application filed under Order XX Rule 18 of the Code for passing of final decree cannot be considered as independent application so as to attract the provisions of Article 137 of the Limitation Act. It is an application to be filed in a pending suit for further action in the matter in terms of the definition of decree contained in Section 2(2) of the Code, When the suit, for all practical purposes continues till final decree is passed, any application filed in the pending suit cannot be treated as an independent application so as to attract one or other relevant Article in Schedule-I appended to the Limitation Act.

Article 137 of the Limitation Act has no application for the above reasons as held in *Jonnavaram Ibrahim & Anr. Vs Uppaluru Jahara Bi (died) & Ors: 2005 SCC OnLine AP 195.*

WHETHER THIRD PARTY CAN BE ADDED, AFTER PRELIMINARY DECREE:

Third parties may be added on their own application after a preliminary decree in a partition suit was passed as held in ***Ramaswami Chettiar Vs. Vellayappa Chettiar : (1931) 60 M.L.J. 229***. The reason is, the proceedings do not come to an end till the passing of the final decree and therefore at the stage of final decree proceedings also, parties can be impleaded (*as held in* ***Swayamprakasam Chidambaranathan Vs. R. Vijayarangam : (1970) 1 MLJ 243***). Order 1 Rule 10(2) of the Civil Procedure Code gives power to the Court to implead parties at any stage of the proceedings in a partition suit.

In ***Syed Mohiddin Vs. Abdul Rahim AIR 1964 AP 260,*** held that in the interests of justice and to avoid multiplicity of suits, third party can be impleaded even after passing of a preliminary decree when the decree was obtained by playing fraud without impleading the persons, who are entitled to claim share in the property. This principle is approved by the division bench of the Hon'ble High Court of AP in ***Ramader Appala Narasinga Rao Vs. Chundrur Sarada AIR 1976 AP 226*.**

Coming to the contrary view, in **Gooti Nagarathnamma Chennakeshapu Venkamma And Ors.** ***2006 (3) ALD 766***, it was held that,

In the final decree proceedings, an exercise would be undertaken to divide the available properties and allot the respective shares to the parties in terms of the preliminary decree. Depending upon the nature of the properties and the existence of agreement, or lack of it, among the parties, the Court is required to examine the matter further, which would be mostly ministerial, than adjudicatory, in nature. The final decree proceedings come to an end, with the division of properties and allotment of shares. If the final decree is to result in the delivery of possession of property, by one party to another and there exists any non-compliance with the final decree, the aggrieved party has to initiate execution proceedings. It is not at all in the

contemplation of the final decree proceedings, to induct the parties into the possession of their respective shares. That is to be relegated to the stage of execution.

AMENDMENT TO FINAL DECREE:

A final decree cannot amend or go behind the preliminary decree on a matter determined by the preliminary decree as held in ***Muthangi Ayyanna vs Muthangi Jaggarao And Ors. : AIR 1977 SC 292.***

In ***Peethani Suryanarayana & Anr Vs. Repaka Venkata Ramana Kishore & others (2009) 11 SCC 308***, the Hon'ble Apex Court discussed the powers of the Court to amend the final decree and its limitations. It was held at paragraph No. 11 that,

> "11. The power of the court to allow such an application for amendment of plaint is neither in doubt nor in dispute. Such a wide power on the part of the court is circumscribed by two factors, viz., (i) the application must be bonafide; (ii) the same should not cause injustice to the other side and (iii) it should not affect the right already accrued to the defendants".

Besides the above, all amendments ought to be allowed which satisfy the two conditions: (a) of not working injustice to the other side, and (b) of being necessary for the purpose of determining the real questions in controversy between the parties as held in ***North Eastern Railway Administration, Gorakhpur Vs Bhagwan Das (Dead) By Lrs. : (2008) 8 SCC 511*.**

The proposed amendment was necessary for the purpose of bringing to the fore the real question in controversy between the parties, and the refusal to permit the amendment would create needless complications at the stage of execution in the event of the plaintiff-appellant succeeding in the suit ***Sajjan Kumar Vs. Ram Kishan : (2005) 13 SCC 89*.**

Methods of adjustments among the coparceners in Final decree proceedings:

Property can be enjoyed by coparceners jointly or in turns.

One of the coparceners may keep the property and the value of it may be divided among other coparceners as compensation.

Or the property may be sold and the proceeds from the same may be distributed among the coparceners.

Section 2 of the Partition Act, 1893 says that if in case of a suit for the partition where the division of property cannot be conveniently made, the court may direct that such a property may be sold and proceeds to be divided among the coparceners if it benefits all.

Section 3 of the Partition Act 1893 says that "If, in any case, one shareholder requests court to direct for a sale and other shareholder applies for leave to buy at a valuation the share or shares of the party or parties asking for a sale, the Court shall order a valuation of the share or shares and offer to sell the same to such shareholder at the price so ascertained, and may give all necessary and proper directions in that behalf.

. If two or more shareholders severally apply for leave to buy at the valuation ordered, the Court shall order a sale of the share or shares to the shareholder who offers to pay the highest price above the valuation made by the Court.

If no such shareholder is willing to buy such share or shares at the price so ascertained, the applicant or applicants shall be liable to pay all costs of or incident to the application or applications.

Conclusion:

In summary, while a preliminary decree establishes the rights and liabilities of the parties and sets the stage for further proceedings to ascertain specific shares or amounts, a final decree conclusively determines these shares or amounts and brings the suit to a definitive conclusion, a

preliminary decree in CPC litigation, particularly in cases of partition, serves to establish the substantive rights of the parties and sets the stage for further proceedings to ascertain specific shares or amounts to be awarded to each party, a preliminary decree in accordance with the CPC declares the substantive rights of the parties involved in a civil suit, particularly in cases such as partition, and sets the stage for further proceedings leading to the final adjudication of the matter, a final decree under the CPC represents the conclusive determination of the rights and liabilities of the parties involved in a civil suit, particularly in cases where property rights or other substantive issues are at stake. It provides for the actual division or distribution of property and brings the litigation to a definitive conclusion, the final decree serves as the ultimate resolution of the suit, providing for the division or distribution of property or other relief as directed by the preliminary decree, and bringing closure to the litigation process.

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TOPIC-V

V. MESNE PROFITS

"Mesne" is an old French word that meant "intermediate". It gives us the modern expression "in the meantime": "during a period between now and a future date". It also gives us "mesne profits": "benefits accruing during a period between two dates".

The underlying principle based on which the Code of Civil Procedure, 1908 functions is "**Ubi Jus Ibi Remedium"** that signifies "**where there is a right, there is a remedy"** The concept of Mesne Profits has been developed from this principle because it is the law of nature to provide the right to compensation where there has been an infringement or breach of a legal right. When this claim arises, the law acts as a shield to protect the original owner of the property, thereby, ensuring compensation from the illegal or unlawful possessor, mesne Profits is a mode of such compensation facilitating remedy to the aggrieved party refraining the wrongful possessor from enjoying profits derived from such property.

Mesne Profits of property has been defined under Section 2 (12) of the Code of the Civil Procedure, 1908 as those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made by the person in wrongful possession.

Scope Of Mesne Profits:

The scope of Mesne Profits is very wide in its own circle. Until now it is clear that Mesne Profits are granted on property but are restricted only to those profits which are derived by a person in wrongful possession of property belonging to another. They have no application to profits accountable by a person not in wrongful possession of the property such as by a co-sharer, before partition. The possession of a co-sharer can never be wrongful as he/she has right and interest in every inch of the undivided property.

Where there is a severance in the status of a Joint Hindu Family and the coparceners thereupon become merely tenants-in-common, in a Suit for Partition filed by one of them against the others the only right he/she has is the right to claim accounts of the past and future Mesne Profits until the date of actual partition by metes and bounds after making all just allowances in favour of the collecting tenant-in-common. The tenant-in-common who is in possession cannot be said to be in wrongful possession though he may be liable to render accounts relating to his/her share, such a claim for accounts is not a claim for Mesne Profits. Mesne Profits can be claimed regarding immovable property and not with regard to movable property.

Legal Provision Related To Mesne Profits:

Mesne Profits are defined under **Section 2 (12) of the Code of Civil Procedure, 1908.**

Section 2 (12) of the Code of Civil Procedure, 1908 provides that: [Mesne Profits of property means those profits which the person in wrongful possession of such property actually received or might with the ordinary diligence have received therefrom, together with interest on such profits but shall not include profits due to improvement made by the person in wrongful possession.]

From the analysis of the above stated definition one can conclude that Mesne Profits are the profits, which the person in unlawful possession actually earned or might have earned with the ordinary diligence. According to Section 2 (12) of the Code of Civil Procedure, 1908 a person becomes entitled to Mesne Profits only when he/she has right to obtain possession but another person whose occupation is unauthorized keeps him/her deprived of that possession. The first and foremost condition for awarding Mesne Profits is unlawful possession of the occupant of the property.

In ***Nataraja Achari Vs Balambal Ammal***, AIR 1980 Mad 2228, taking into consideration the definition of Mesne Profits provided under Section 2 (12), Hon'ble Court observed that there are three different types of cases in which question of rights of profits arise:

Suit for Ejectment or Recovery of Possession of Immovable Property from a person in possession without title, together with a claim for past or past and future Mesne Profits.

A Suit for Partition by one or more tenants in common against others with a claim for account of past or past and future profits.

Suits for Partition by a member of Joint Hindu Family with a claim for an account from the Manager.

The Court observed, in the first case, the possession of the Defendant not being lawful, the Plaintiff is entitled to recover Mesne Profits such profits being really in the nature of damages. In second case the possession and receipt of profits by the Defendant not being wrongful the Plaintiff's remedy is to have an account of such profits making all just allowance in the favour of the collecting tenant in common. In the third case the Plaintiff must take the Joint Family Property as it exists at the date of the demand for partition and is not entitled to open up past account or claim relief on the ground of past inequality of enjoyment of the profit, except where the manager has been guilty of fraudulent conduct or misappropriation. The Plaintiff would however, be in the position of the tenant in common from the date of severance in status and his/her right would have to be worked out on that basis.

The second legal provision relating to Mesne Profits is provided in Order XX Rule 12 of Code of the Civil Procedure Code, 1908, which deals with decree for possession and mesne profits, but in ***Kolluri Suseelamma Vs.Yerramilli Nageswara Rao 1999 (3) ALT 41*****,** the Honble court discussed about ascertainment of profits, past and future, and the Hon’ble court held that

"Suit for partition and separate possession of properties devolved by gift jointly made to donees, Order 20 Rule 18 applicable and not Or.20 Rule 12. Profits ascertainable under Rule 18. Not mesne profits within the meaning of Section 2 (12) CPC. Profits under Order 20 Rule 12 accountable by a person in wrongful possession while profits Under Order 20 Rule 18 accountable by a person in lawful possession as a co-sharer. ***Bar of limitation not applicable to claim profits by a co-sharer Under Order 20 Rule 18****. Jointness of the properties is the criterion for application of Order 20 Rule 18. Properties need not be coparcenary properties or joint family properties for applicability of Order 20 Rule 18 CPC"*

In ***Mishrilal vs.Nathu, 1998 (2) CCC 273 (M.P.) = 1998(5) ALT 9.3(DN OHC)***, the Hon'ble Court held that

*"****Rule 12 has no application to partition suit, Profits to be accounted for are not mesne profits****. In a suit for partition the plaintiff-co-sharer is entitled to and the Court below has ample jurisdiction to award profits or rendition of accounts of the income of plaintiff's share of the properties right upto the delivery of possession and not upto 3 years only"*

In ***R.Dhanraj vs Rajamani Ammal on 11 January, 2021,*** the Honble court at para number 18 held that,

"Civil Procedure Code, and followed the ratio of the Full Bench of this Court reported in Basavayya v. Guruvayya and ultimately held that ***Order 20, Rule 12 of the Code of Civil Procedure will not be applicable*** *to a case like the present case, because when an account of the income from the property pertaining to the share of the plaintiff is ordered up to the date of the final decree what actually happens is the division of an integral portion of the hotch pot comprising of not only the property but also the income and accretions thereto up to the date of the final decree and to such a case, Order 20, Rule 12 will be inapplicable.....10.This Court after referring several Judgments held that the determination of mesne profit in a partition suit will fall under Order 20 Rule 18 of CPC.* ***A claim for mesne profit under Order 20 Rule 12 of CPC has no application to the suit for partition.*** *That being the position, the question of applicability of provision under*

Order 20 Rule 12 does not arise. Claiming of mesne profit would fall under Order 20 Rule 18 of CPC. Therefore period of limitation would not applicable for seeking mesne profit and it would be given for more than three years from the date of decree."

In ***AIR 1989 NOC 74 (Mad) (Krishnamurthi v. Gopal Gounder),*** considering a case of determination of mesne profits in the partition suit observed thus,

"In a suit for partition, the mesne profits with reference to the properties forming the subject-matter of the suit, and referable to the properties, eventually allotted to the share of the successful party form part and parcel of the corpus itself and are as much in the hotchpot as the lands themselves and it would be most inequitable and unjust that despite a preliminary decree directing the ascertainment of mesne profits, the successful party should be driven to institute another suit separately for the mesne profits and it is certainly not the policy of the law to encourage multiplicity of proceedings. It is the duty of the Court not only to divide the several items of properties, but also the mesne profits derived therefrom, for the profits derived are also in the nature of property liable to be divided between the sharers. Viewed thus, in instant case, in the final decree that had been passed, there had been an omission to recognize the right of the petitioners herein to mesne profits, in which also they would be entitled to a share, as if that also formed part of the properties available for division. The circumstance that a final decree had been passed without reference to the relief of mesne profits granted under the preliminary decree, would not justify the refusal of the relief of ascertainment of mesne profits according to the terms of the preliminary decree. It is open for Court to ascertain same and pass the final decree."

In view of the principles laid down in the above case laws it is pertinent to note that order 20 Rule 12 has no application to the suits for partition, it is the discretion of the courts to *award profits or rendition of accounts in suits for partition.*

Conclusion

The right to possess is a fundamental right that all the people living in the country are granted. If the rightful owner is stripped of his/her possession while also losing the profits he/she should have earned from that possession, he/she should be credited with damages. The idea of Mesne Profits comes into play in this scenario. However, as per the principles laid down in various cases, order 20 Rule 12 of CPC may not be applicable to the suits for partition, order 20 Rule 18 of CPC is applicable for the suits for partition.

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