

Paper presentation on:

PARTITION SUITS -

- a. Persons eligible to seek partition under Hindu succession Act 1956.**
- b. Nature of property liable for partition with reference to coparcenary...**

Submitted by

**Smt. P.J. Sudha, II Addl District and Sessions Judge,
Adoni.**

Smt. Sailaja, Civil Judge Senior Division, Allagadda

Sri K. Guru Aravind, CIVIL JUDGE, Junior Division.

Yemmiganur

**PARTITION SUITS - a) Persons eligible to seek partition
under HIndu succession Act 1956.**

Under the Hindu law, partition is a severance of joint status and all that is necessary to constitute partition is a definite and unequivocal indication of the intention of a coparcener of a joint family to separate himself from the family and enjoy his share in severally but this intention has to be communicated to the other members of the family. To understand this concept better, it's essential to delve into what constitutes a coparcenary, who qualifies as a coparcener, and the structure of a Hindu Joint Family.

According to the Hindu Succession Act of 1956, Coparcener refers to an individual who receives a legal right to ancestral property by birth. A coparcener is also a member of a Hindu Undivided Family (HUF) and can call for the division of ancestral property. A coparcener is a person who inherits estate as co-heir with others. 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.

A joint Hindu family is a larger body than a Hindu coparcenary. Hindu coparcenary is a much narrower body. It consists of propositus and three lineal descendants. Before 2005, it included only those persons like sons, grandsons, and great grandsons who are the holders of joint property. 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. Coparcener heirs get right by birth. Another method to be a coparcener is by way of adoption. As earlier, a woman could not be a coparcener, but she could still be a joint family member. By substituted section 6 with effect from 9.9.2005 daughters are recognised as coparceners in their rights, by birth in the family like a son. Coparcenary is the creation of law. Only a coparcener has a right to demand partition. Test is if a person can demand a partition, he is a coparcener not otherwise. Great great grandson cannot demand a partition as he is not a coparcener. In a case out of three male descendants, one or other has died, the last holder, even a fifth descendant, can claim partition. In case they are alive, he is excluded.

Section 6 of Hindu Succession Act deals with devolution of interest in coparcenary property of a joint Hindu family governed by the Mitakshara law. The originally enacted provision of section 6 excluded the rule of succession concerning Mitakshara coparcenary property. It provided the interest of a coparcener male Hindu who died after the commencement of Act of 1956, shall be governed by survivorship upon the surviving members of the coparcenary. The exception was provided that if the deceased had left surviving a female relative specified in Class I of the Schedule or a male relative specified in that Class who claims through such female relative, the interest of such coparcener

shall devolve by testamentary or intestate succession, as the case may be, in order to ascertain the share of deceased coparcener, the partition has to be deemed before his death. Explanation 2 disentitled the separated person to make any claim in case of intestate succession.

Though the widow or daughter could claim a share, being a Class I heir in the property left by the deceased coparcener, and a widow was entitled, having a right to claim a share in the event of partition daughter was not treated as a coparcener. The goal of gender justice as constitutionally envisaged is achieved though belatedly, and the discrimination made is taken care of by substituting the provisions of section 6 by Amendment Act, 2005.

It is apparent from the provisions of section 6 that the discrimination with the daughter has been done away with, and they have been provided equal treatment in the matter of inheritance with Mitakshara coparcenary. In several States viz., Andhra Pradesh, Tamil Nadu, Karnataka, and Maharashtra, the State Amendments in the Act of 1956 were made to extend equal rights to daughters in Hindu Mitakshara coparcenary property. An amendment was made on 30.7.1994 by the insertion of Section 6A by Karnataka Act 23 of 1994 in the Act of 1956. In State of Andhra Pradesh, the amendment was made, w.e.f. 5.9.1985, Tamil Nadu w.e.f. 25.3.1989 and Maharashtra w.e.f. 26.9.1994 by the addition of Section 29A in the Act of 1956. In Kerala, the Act was enacted in 1975.

Thus the right to claim partition is a significant basic feature of the coparcenary, and a coparcener is one who can claim partition. The daughter has now become entitled to claim partition of coparcenary w.e.f. 9.9.2005, which is a vital change brought about by the statute. A coparcener enjoys the right to seek severance of status. Under section 6(1) and 6(2), the rights of a daughter are *pari passu* with a son.

We often get to hear the term 'ancestral property', but the exact meaning of the term remains unknown to most of us. The term has not been defined expressly in any statute, but the Courts have time and again explained the term. In simple terms, an ancestral property is a property which is inherited by a person up to four generation of male lineage i.e., his or her father, father's father, or great-grandfather by birth (S. Sampooram v. C.K. Shanmugam, 2022 SCC OnLine Mad 1594). According to Mitakshara Law, the right to ancestral property arises from the birth itself, for a property to be an ancestral property it must remain as an undivided property. Ancestral property does not include self-acquired property, gift, partition deed.(C. Krishna Prasad v. CIT, (1975) 1 SCC 160)

Section 25 of The Hindu Succession Act provides disqualification of a Murderer. A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

Section 26 of The Hindu Succession Act:- Convert's descendants disqualified.—Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

As per **section 28** of The Hindu Succession Act No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity.

CHILD BORN OF A VOID OR VOIDABLE MARRIAGE: A 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.

ADOPTED CHILD: 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 Adoption 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.

Position of Minor Coparcener: Under Hindu Law both minor and major coparcener have same rights and both are entitled for partition. Guardian can file a suit on behalf of minor, and if any unfair partition takes place partition can be reopened.

Alienee A purchaser of coparceners interest in a sale has a right to demand partition as he steps into the shoes of the coparcener.

**PARTITION SUITS - b) Nature of property liable for
partition with reference to coparcenary...**

The joint family property is the subject to partition. The individual properties of coparceners are not subject to partition. If a joint family is in possession of a property held by it as the permanent lease, such property is also subject to partition among the coparceners. There are certain properties which are not available for partition like the staircase, cooked food, utensils, garden etc. because of their indivisible nature. Whereas, certain things which are divisible by nature or subject to adjustments among the coparceners, 3 methods of adjustments among the coparceners are available-

1. Property can be enjoyed by coparceners jointly or in turns.
2. One of the coparceners may keep the property and the value of it may be divided among other coparceners as compensation.
3. Or the property may be sold and the proceeds from the same may be distributed among the coparceners.

Principle Of Partition

If property can be partitioned without destroying the value of property, then this partition has to be done, but if partition cannot be

done unless the property is destroyed then the money compensation should be given.

Property Liable For Partition:

- a) It is only the coparcenary property which is subject to the partition. The separate property is not liable to partition at least it belongs absolutely to the owner thereof.

Properties Which Are Not Subject To Partition

- a) **Impartible estates:** Property which descends from one person to another because of some custom like Raj or principality.
- b) **Dwelling house:** In Ancient times Smritikars believed that dwelling house cannot be partitioned but the modern view does 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.
- c) **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.
- d) **Property indivisible by its nature:** Some properties are indivisible because of their nature like animals, furnitures, stair cases, wells, ponds, 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. The places of worship and sacrifice or the property which has been dedicated to religious and charitable purposes. The well and the rights to draw water from the well The ornaments and the dress materials given to the wives of the coparceners

S No	Here's a list of Supreme Court's Latest Judgments on Ancestral Property.
1	<p>Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1</p> <p>The Supreme Court held that a woman/daughter shall also be considered as a joint legal heir as a son and can inherit ancestral property equally as male heir, irrespective that the father was not alive before the Hindu Succession (Amendment) Act, 2005, came into effect. Ancestral property rights to child born out of live-in relationship</p>
2	<p>K.C. Laxmana v. K.C. Chandrappa Gowda, 2022 SCC OnLine SC 471</p> <p>The Supreme Court held that a Hindu father or any other managing member of a Hindu Undivided Family has power to make a gift of ancestral property only for a 'pious purpose' and what is understood by the term 'pious purpose' is a gift for charitable and/or religious purpose. Therefore, a deed of gift regarding the ancestral property executed 'out of love and affection' does not come within the scope of the term 'pious purpose'.</p>

3	<p>Arunachala Gounder v. Ponnusamy, (2022) 11 SCC 520 The Supreme Court held that the self-acquired property of a Hindu male dying intestate i.e., without writing a will, would devolve by inheritance and not by succession. Further, the Court said that such property shall be inherited by the daughter, in addition to the property of the coparcenary which was obtained through partition. The Court observed that if a woman dies intestate, then any ancestral property passed onto her from her father would be bestowed upon the heirs of her father and similarly the property passed onto her from her husband's family would be bestowed to her husband's heir.</p>
4	<p>Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan, 2022 SCC OnLine SC 737 The Supreme Court ruled that even children born from a live-in relationship have the coparcenary right to inherit the family's property. A child who is born to live -in partners living together for an extended period has rights over the ancestral property of his father.</p>