

PARTITION SUITS

- (A) Persons eligible to seek partition under Hindu Succession Act 1956**
- (B) Nature of property liable for partition with reference to coparcenery**
- (C) Status of third party purchaser**
- (D) Preliminary, Final decree & Mesne profits**

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Introduction:- Division of joint family property (s) among the sharers is called as 'partition'. Then joint family ceases to be joint family, and nuclear family comes into existence. And joint status of the family comes to an end.

For example: If a partition take place in a joint family consists of A and his two sons, B and C, there will come into existence three separate families of A, B and C.

Suppose a joint family consists of three brother A, B and C and their three sons; As, Bs and Cs. If three brothers partition, their sons not partitioning from them, there will come into existence three joint families, consisting of A and his son As, B and his son Bs and C and his son Cs.

Hindu joint family is governed by Mithakshara Law and Dayabhaga Law. Only in Assam, Bengal and Tripura Dayabhaga Law is applicable and remaining states of India Mithakshara Law is applicable.

Coparcenery property:-

A Hindu coparcenery is a much narrower body than a joint family. It includes only those persons who acquire by birth an interest in the joint or coparcenery property. These are sons, grandsons, great grandsons of the holder of the joint property for the time being. In other words, the three generations next to the holder of unbroken male descent.

Person entitled to claim partition of coparcenery property:-

Coparceners are defined as an all the male member of the Hindu joint family and daughter of the Hindu joint family also a coparcener after 2005

(Amendment of Hindu Succession Act, 1956). All the coparceners have a right to claim for a partition in Hindu joint family.

According to Hindu Law, major and minor coparcener (including daughter as per Hindu Succession (Amendment) Act, 2005), 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 any time with or without reason keeping in mind that the demand has to be complied upon legally by Karta of the family. In 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.

FEMALE MEMBERS namely father's wife, the widowed mother, the paternal grandmother

Generally, the female sharers namely father's wife, the widowed mother, the paternal grandmother 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.

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 disentitled 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 overtime, then he would not be deprived of his interest.

SONS BORN AFTER PARTITION:

After-born sons are usually categorized under two heads; firstly, those sons who are born or conceived after partition, and secondly, the sons born after partition but begotten before the partition. In other words, if a son 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 brothers. On the other hand, if a son is begotten or born after partition, and if his father has taken his share in the property and has got separated from other sons, then also the new born son would be entitled to his father's share from the partition, but here, in this case, he would not be entitled to reopen the partition for his separate property.

SON 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.

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 HAMA, 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.

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 Vysyas, 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.

Alienee/Purchaser: -

When a coparcener has a right to sell his interest and the alienee by purchase it through a court or private sale, the alienee/purchaser may seek partition of coparcenary property.

EFFECT OF PARTITION:

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

Nature of property liable for partition with reference to coparcenary:-

Generally the entire joint family property constitutes the subject matter of the partition. Separate or self acquired property of any member of the family is not eligible to be divided amongst the coparceners of the family on partition.

If a partition of a property can be effected without shattering the intrinsic value of the whole property, such partition is mandatory to be made. On the contrary, if a partition cannot be made without shattering the intrinsic

value of the property, in such circumstances, a money compensation must be given to every coparcener instead of his respective share.

If a joint family property consists of movable and immovable properties then such coparcener must be given his share in all movables and immovable properties. As per the interpretation of the court in various cases, there is no hard and fast rule as far as the share of each coparcener in immovable properties is concerned. It may be possible that some coparceners may not get any share in immovable property. It depends upon the nature and number of immovable properties and also the number of coparceners in a joint family to whom a share in the property has to be given. Properties of greater value may go to one coparcener while of lesser value to another. In such a situation the adjustment of the value is important. So, the coparcener who gets the larger value of the property may provide money to the one who gets the share of lesser value. In this way, a justified and satisfactory division of joint family can be done so that each coparcener is benefited.

Properties not subject to partition with reference to coparcenery:-

The property to which the law of primogeniture applies, cannot be divided.

Example: Family adults and place of worship cannot be divided. Similarly the following properties are not liable to partition.

- i. Impartible estate i.e., property which descends to one member only, either by custom or under any provision of law or by terms of grant;
- ii. Property individual by nature; example: ponds, staircase, passage.
- iii. Family idols and object of worship;
- iv. Separate property of a member;
- v. The property which has been dedicated to religious and charitable purposes;
- vi. The well and the right to draw water from the well;
- vii. The ornaments and the dress materials given to the wives of coparceners.

Status of third party purchaser:-

No member of a coparcenery, including the Karta, has the right to alienate his interest over coparcenery properties under usual circumstances. However, only the Karta of the family has the power to alienate the joint family property only if there is any legal necessity, for the benefit of the estate or to take care of the other indispensable duties like religious duties.

In view of the said circumstances, if a coparcener sold his undivided share in the coparcenery property with the consent of other coparceners, the purchaser has to file suit for partition and separate possession.

If the purchaser purchases the undivided share of a coparcener in the coparcenery property through the court of law, he has to file the suit for partition and separate possession of the same;

PRELIMINARY DECREE AND FINAL DECREE

(Section 2(2) of the Civil Procedure Code, 1908):-

Preliminary Decree:

It means an adjudication that finally decides the rights of the parties, but does not completely dispose of the suit.

So, in preliminary decree, certain rights are conclusively determined and unless preliminary decree is challenged in appeal, the rights so determined become final and conclusive and cannot be questioned in the final decree.

Generally, in partition suits by way of preliminary decree the court will decide the right and share of the parties over the subject matter of the suit, so also right and share of the parties over the mesne profits.

Final Decree:-

The final decree merely carries in the fulfillment of the preliminary decree.

Final decree is one which completely disposes of a suit and finally settles all questions in controversy between the parties and nothing remains to be decided thereafter. While the preliminary decree ascertains what is to be done, the final decree states the result achieved by means of the preliminary

decree. The preliminary decree is not dependent on the final one, but the final decree is really dependent and subordinate to the preliminary decree. Thus, in a partition suit, the preliminary decree declares the rights of the parties and the final decree divides the properties specifically by metes and bounds in terms of rights so declared, thereby completely disposing of the suit.

MESNE PROFITS (Section 2 (12) of Civil Procedure Code, 1908) :-

Mesne profits of property means 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.

In simple words mesne profits means that the damages and compensation that are recoverable from a person who has been in the wrongful possession means that profit which the plaintiff has lost by reason of defendant's wrongful act.

Under Order XX Rule 12 of Civil Procedure Code, 1908, the Court may pass a decree directing an enquiry as to the rent or mesne profits from the date of institution of the suit until the delivery of the possession to the owner.

Important Case Laws:-

1) ***Baljinder Singh v. Rattan Singh*** (delivered by Hon'ble Apex Court on 5th August, 2008)

The Hon'ble Apex Court has held that a gift by a coparcener of his undivided interest in the coparcenary property is void.

However, a coparcener can make a gift of his undivided interest in the coparcenary property to another coparcener or to a stranger with the prior consent of all other coparceners. Such gift would be quite legal and valid.

The Hon'ble Apex Court has further held that father has the power under the Hindu Law of making within reasonable limits, gifts of movable property to a daughter.

2) ***Beerreddy Dasaratharami Reddy v. V.Manjunath and Another*** (delivered by the Hon'ble Apex Court in Civil Appeal No.7037 of 2021 dt: 13.12.2021)

The Hon'ble Apex Court has held that as per the settled law Karta has the right to execute agreement of sale or sale deed of a Hindu joint family property for the purpose of legal necessity or benefit of the estate. It would bind the interest of all undivided members of the family even when they are minors or widows.

3) ***Vineetha Sharma v. Rakesh Sharma*** (delivered by the Hon'ble Apex Court on 11th August, 2020)

The Hon'ble Apex Court has overruled the view taken in the earlier decision in Prakash v. Pulavathi & others. In Prakash v. Pulavathi & others, it was held that Section 6 of Hindu Succession Act, 1956 (as amended in the year 2005) is not retrospective in operation, and it applies when both coparceners and his daughter were alive on the date of commencement of the Amendment Act, 09.09.2005 (to get equal right to the daughter on par with the son in the coparcenary property). However, in ***Vineetha Sharma Case*** referred supra, the Hon'ble Apex Court has held that the substituted Section 6 of the Hindu Succession Act, 1956 confer status of coparcener on the daughter born before or after amendment in the same manner as son with the same rights and liabilities. The Hon'ble Apex Court has further held that since the right of the daughter in coparcenary property is by birth, it is not necessary that father (of the daughter) should be living as on 09.09.2005.

4) ***Kattukandi Edathil Krishnan v. Kattukandi Edathil Valsan*** (delivered by the Hon'ble Apex Court on 13th June, 2022)

The Hon'ble Apex Court has held that once a preliminary decree is passed (in partition suit) by the Trial Court, the Court should proceed with the case for drawing up the final decree *suo motu*. After passing the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the Civil Procedure Code. The Courts should not adjourn the matter *sine die*. There is also no need to file a separate final decree proceedings. In the same suit, the Trial 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.
