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**AN ANALYSIS OF THE CIRCUMSTANCES UNDER WHICH  
PARTITION CAN BE RE-OPENED UNDER HINDU LAW**- Tanvi Bhargava<sup>1</sup>**INTRODUCTION**

'Partition', essentially means to divide into two or multiple parts or to separate, "however under Hindu law, it generally means a division or splitting of a joint Hindu family into smaller, separate and independent units, with conferment of separate status on the undivided coparceners."<sup>2</sup> Partition can take place either cordially or through the intervention and mediation of the court. However, at whatever time there is adjustment in the status by partition, a member is no longer considered to be a representative of the family in question. Hindu law has a high place reserved for customs and ancient scriptural authority, hence there exist a lot of barriers in the alteration of the laws. Though, according to the Shastric laws which were quoted in Manu "Once is the partition of inheritance made, once is a damsel given in marriage; and once does a man say 'I give', these three acts of good men are done once for all and are irrevocable."<sup>3</sup> Nevertheless, there are certain circumstances under which a suit may be filed and then the partition may be reopened. The fundamental explanation behind permitting re-opening of partition is that upon the partition, the previous coparceners hold their proportions and their interest as separate property with an absolute and legitimate title towards them. They are legally allowed to enter into exchanges and transactions identified and related to them, so as to create substantial titles for others, i.e., the third parties. However, there could be certain situations where it might become imperative to undertake redistribution and recalculation of the properties or else injustice could be caused to family members. According to the Yajnavalka, "The settled

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<sup>1</sup> Student at Jindal Global Law School

<sup>2</sup> Poonam Pradhan Saxena, Family Law Lectures: Family Law II 205(4th ed. LexisNexis Butterworths 2004)

<sup>3</sup> Balaji Ganoba v. Annapurnabai, AIR 1952 Nag

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rule is that co-heirs should again divide on equal terms that wealth which being concealed by one co-heir from another is recovered after partition.<sup>4</sup>Banking on the judgement delivered by the court in **Ratnam Chettiar&Ors vs S. M. KuppuswamiChettiar**, partition cannot be reopened in a Hindu undivided family, if it was initiated with their own consent unless it can be proved that it was obtained by undue influence, coercion or misrepresentation of fraud.<sup>5</sup> This paper seeks to explore all these circumstances and analyse how these have developed over the years with the help of precedents set by the courts in India.

### **MINOR COPARCENER**

After becoming of age, a minor coparcener can file a suit for reopening of partition if he can establish that the earlier partition was detrimental to his interest.<sup>6</sup> Even though this is a very broad exception and extends a lot of scope to the minor to accommodate his interests, however, this is not an absolute exception. In the judgement, **Ratnam Chettiar&Ors v. S. M. KuppuswamiChettiar & Ors**,<sup>7</sup> the Supreme Court held that if a partition has taken place in good faith and a bona fide approach has been used, thereby keeping in mind the benefits of the minors, then they would be bound by the same. Therefore, a minor would only succeed in filing a suit if it were explicitly detrimental to his interest. The facts of this case state that this case was brought forward by minors who claimed that partition was secured by committing fraud and undue influence and by concealing the assets that belonged to the family which were seized by the defendant in the case. Delivering the verdict in favour of the petitioners, the court also lay down certain propositions regarding the interests of the minors. However, it was noted in the case **Lal Bahadur Singh v. Sispal Singh and Ors**<sup>8</sup> that despite the grounds of mistake and fraud failing, the partition which had allegedly affected the interests and benefits of the minor coparcener, could still be reopened. Similarly, in **Sukhrani v. Hari Shanker**,<sup>9</sup> the court discussed the Ratnam Chettiar case and held that even though there was no fraud, misrepresentation or undue influence, a partition could still be reopened at the instance of minor coparcener if the partition

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<sup>4</sup> A Kuppuswami, (ed.), Mayne's Treatise on Hindu Law and Usage 753 (13<sup>th</sup> ed. Bharat Law House 1995).

<sup>5</sup>Ratnam Chettiar & Ors v. S. M. Kuppuswami Chettiar & Ors, 1976 AIR, 1 1976 SCR (1) 863

<sup>6</sup>*Id.*

<sup>7</sup> *Id.*

<sup>8</sup>Lal Bahadur Singh v. Sispal Singh and ors., T.L.R. 14 All 498.

<sup>9</sup>Sukhrani (Dead) By L.Rs. &Ors v. Hari Shanker, AIR 1979 SC 1436.

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was unfair or prejudicial to his interest, even though his share was represented by his father at the time of partition.

Therefore, the scope of filing for partition is not only constrained to the aspect of fraud and undue influence. In the event that the partition was made and finalised, without there being any process of testing the authenticity and validity of the assets, then the partition would not be considered final. It will only be binding on the minors if it was unprejudiced, authoritative and legal.<sup>10</sup> Through these case laws, we can conclude that the court has used its power in widening the scope under which the minor can reopen a partition and therefore giving the minor coparcener more room and opportunity to adjust and revise the partition justly and legitimately.

### **MISTAKE**

There is another situation under which a partition can be reopened, which is broadly covered in cases of mistake. If a property is left out while the partition took place or is mistakenly included and the possession is passed on to the coparcener then under this circumstance, a partition can be reopened.

In *Balaji Ganoba v. Annapurnabai*<sup>11</sup>, the court referred to another judgement while analysing that a suit for reopening of partition for the 'readjustment of shares' would be permitted, if it is proved that when the property passed out of the possession of one party, but was initially wrongly included in the share of the party. Referencing that this claim is legitimate based on impartial standards and "equitable principles", the court declared that the suffering party will be eligible to claim compensation from the shares of the other parties.<sup>12</sup> Interestingly, the court also ruled that a property that passes out of the possession of an owner but thereafter if that property is wrongly included in his assets, then the person receiving this wrongly included property is entitled to compensation out of the share of the other parties.<sup>13</sup> It substantiated this by quoting the opinion of Walsh J in *Ganeshi Lal v. Babu Lal*, which is where he opines that there would be **"an implied and mutual right of indemnity or contribution in respect of any paramount claim by the third parties which throws a burden of loss not contemplated in the partition"**

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<sup>10</sup>Chanvira 'Pa' v. Da 'Na' 'Va' & Ors., I.L.R. 19 Bom. 593.

<sup>11</sup>Balaji Ganoba v. Annapurnabai, AIR 1952 Nag 2.

<sup>12</sup>Damodara Nayak v. Vatsala Nayak And Ors., AIR 1990 Ker 348.

<sup>13</sup>Supra note 10.

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**proceedings-unfairly upon one of the parties.**<sup>14</sup> Therefore, if there has been an error by the court because of a “common mistake” then this error can be ratified.<sup>15</sup> This gives the property holders to rectify the mistakes made in relation to the division of a certain amount of property by facilitating a check on the property divided thereby preventing any losses or unreasonable gains.

An exceptional case was that of **Debabrata Ghose v. Jnanendra**<sup>16</sup> which essentially talked about properties that were not included in the partition but were left out while the partition took place. Even though, corresponding to the facts of the case, it was not viable to re-open partition, however, the court did establish a very important principle by holding that such cases required intervention by the court of equity because **“the partition which included outside property is not invalid or a nullity but is merely an inequitable partition”** and therefore, it imposes hardship on only of the parties and thus subject to correction.<sup>17</sup> Thus, this sets grounds for reopening of partition in a situation where coparcenary property has either been hidden or been left out when the partition took place and thus the coparceners have the right to divide the left over property equally as well. This exception reduces the chances of a person being deprived of some property that should legally belong to him only because it was not a part of the partition deed because of a miscalculation.

## **FRAUD AND UNDUE INFLUENCE**

A partition can also be reopened in a case where ‘fraud or undue influence’ has been exercised while dividing property. However, such an instance discloses an uncertain and staggering course of problems. Quoting Poonam Pradhan, **“Where one or more of the coparceners conceal the joint family property at the time of the partition, to gain an unjust and undue advantage over the others, or with an intention of getting a bigger share than what they would have been entitled to otherwise, the partition can be re-opened on the discovery of this fraud.”**<sup>18</sup>

I feel that the problem of fraud and undue influence is interconnected and they overlap to an extent in certain cases. For example, in the case, **A Venkappa Bhatta v. Gangamma**,<sup>19</sup> the court

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<sup>14</sup> **Ganeshi Lal vs Babu Lal And Ors.** 45 Ind Cas 4

<sup>15</sup> *Id.*

<sup>16</sup> *Debabrata Ghose v. Jnanendra N. Ghose And Ors.*, AIR 1960 Cal 381.

<sup>17</sup> *Id.*

<sup>18</sup> Poonam Pradhan Saxena, *supra* note 1, at 230.

<sup>19</sup> *A. Venkappa Bhatta And Ors. v. Gangamma*, AIR 1988 Ker 133.

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held that the even though the case shows evidence of fraud on registration, the case was brought about by undue influence and misrepresentation.

The Supreme Court, in the case, Ladli Parshad v. Kamal Distillery Co.,<sup>20</sup> while analysing undue influence and fraud and on what premise it was being applied, perceived the principles of Common Law with approval and presumed that in a situation where one party is in a position where he has the power to “**dominate the will of the other**” or by obtaining an unfair advantage, then the transaction is to be assumed to have taken place due to undue influence.<sup>21</sup> I feel that to a certain extent, if a person is in a position where he can influence the decision of the other or in a position that is superior to the other person, then the problem of undue influence does come into the picture unwillingly.

Similarly, in another interesting case, Tate v. Williamson, the court observed a situation between two people and held that, where one person reposes confidence in the other but that is then abused and by the other in order to “**obtain an advantage at the expense of the confiding party**”, then the person obtaining advantage will not be able to retain this advantage.<sup>22</sup> If a coparcener has been intimidated or coerced into settling for a certain amount in the total property, or has been made to believe, by exercising fraud, something that is not true, then such a situation would arise. Also, for example, concealment of property or showing that a certain amount of property that would be granted to him on partition, belongs to someone else then he should have the rights to rectify it by filing a suit and resolve the concerns with the help of the courts backed by law. In a situation where a person is alienating from his property, he should not be given the sole discretion to exercise this on his own as this can lead to unwarranted repercussions. B.K. Sharma, in his article has opined that considering the judgements given by the courts, it has been established that along with the decision of the Karta, the adult coparceners also need to be consulted prior to alienation.<sup>23</sup> Therefore, partition under such circumstances, can be reopened considering such precedents have been set by the courts in India.

## ABSENT AND DISQUALIFIED COPARCENERS

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<sup>20</sup>Ladli Parshad And Anr. v. Karnal Distillery Co. Ltd., AIR 1954 P H 94.

<sup>21</sup>*Id.*

<sup>22</sup> Tate v. Williamson, (1866) 2 Ch. App. 55 at 61.

<sup>23</sup> B.K. Sharma, *Hindu Law*, 7 Journal of the Indian Law Institute 519, (1965), [www.jstor.org/stable/43949860](http://www.jstor.org/stable/43949860).

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Another aspect of law which has developed over time has been the reopening of partition in cases of absent and disqualified coparceners. According to Poonam Pradhan, the Hindu law states after the last holder of the property, a male child does not have the right to acquire property for three generations if he was affected with “*certain kinds of diseases of infirmities.*”. This in turn labels him as a disqualified coparcener and he is considered incapable of inheriting property.<sup>24</sup>This coparcener is entitled to re-open the partition after recovering, if during the time of partition, no share has been allotted to him or the share that has been allotted is unequal and unfair to his interest.<sup>25</sup>Despite the fact that his incapacity precludes him as a coparcener, he can, if the deformity is expelled by medication during a period of time subsequent to the partition, get it reopened. His right of participation in the reopening of the partition will take effect just as in the case of a son who is born after partition.<sup>26</sup>Therefore, whenever a disqualified coparcener is qualified to inherit again, the court does provide adequate means for him to exercise his legal rights in accordance with the law. However, this too is not an absolute right and depends on the circumstances and the facts of the case.

The absent coparceners also include within its ambit, a son who is born subsequent to the partition. Just as in the case of a disqualified or an absent coparcener, an unborn son is also entitled to reopen the partition. A son born subsequent to the partition proceedings, can essentially get the partition reopened in circumstances where his father, during partition has not retained or reserved a share for himself.<sup>27</sup> In contrast, however, a son who is born after the partition is not eligible and entitled to claim for reopening of partition in a situation where father has retained a portion for himself.<sup>28</sup> There were two cases where the court distinguished these from the other. The first instance was realized in the case of *Athilinga Goundar v. Ramaswami Goundar*,<sup>29</sup> where the father of the three children had preserved or retained a share for himself, for his maintenance, without possessing the power to alienate with it. He had two wives and thus contemplated that there would be a situation of a son born after the partition. He had a clause in his partition deed addressing the issue of the share of the son born after the partition. He added

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<sup>24</sup> Poonam Pradhan Saxena, *supra* note 1, at 233.

<sup>25</sup> Raghavachari, et.al., *Hindu Law: Principles and Precedents* 333 (7<sup>th</sup> ed., Madras: Madras Law Journal, 1980).

<sup>26</sup> *Id.* at 333-334.

<sup>27</sup> S A Desai (ed.), *Mulla- Principles of Hindu Law* 503 (17<sup>th</sup> ed. Butterworths India 2000).

<sup>28</sup> *Id.*

<sup>29</sup> *Athilinga Goundar v. Ramaswami Goundar*, (1944) II MLJ 146.

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that, **“male children who might hereafter born out of your loins (the two wives) should be provided for out of the shares allotted to the respective families”**. The court held that the word family here meant the branch represented by the two wives separately and thus, he could only claim his share from the share of his wife. The court differentiated from this in the case of **Ganpat v. Gopalrao** where the father of three children retained a two third share in his own possession for the to aid or for the benefit of his two minor sons.<sup>30</sup> Post partition, his wife gave birth to another son who ignored the earlier partition and instead, filed a suit for a fresh partition and thereby claimed the share of his oldest brother as well. It was held that a son who is born after the partition has taken place, has absolutely no claim on the share of the brother who has separated and that he only has a “preferential” and favoured claim only over the share of his parents.<sup>31</sup> Mayne, in his book on Hindu Law stressed and emphasized on the fact that in a situation where the incapable heir was on no occasion cured, but would possibly be a father to a son who was capable of inheriting, then if the son was born, or was in the womb, when the partition took place then that son would be entitled to a share from that partition. However, if that son was neither born nor in the womb at the time when the partition was taking place, then he could not claim to get it re-opened.<sup>32</sup> Similarly, in the case of adopted sons George Rankin quotes the opinion of Golapchandra Sarkar who in his Treatise on the Hindu Law opined that in the case of adopted sons, the courts should give them the same rights as real legitimate sons in every instance, including the coparcenary property. Rankin compares them to commentaries which make such inheritance conditional on the adopted son being “endowed with good qualities.”<sup>33</sup>

## CONCLUSION

In conclusion, even though according to Hindu Law, a partition is irrevocable once it has taken place, and is not subject to reopening, the courts, with the help of these precedents have indeed clarified the position of a coparcener in all the different instances where he files a suit for reopening of partition. Even though the partition is essentially an adjustment of varied interests vis-à-vis the full property by distributing them according to specific portions from the aggregate,

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<sup>30</sup>Ganpat v. Gopalrao, (1899) ILR 23 Bom 636.

<sup>31</sup>*Id.*

<sup>32</sup> *Supra* note 3.

<sup>33</sup> George Rankin, *Hindu Law To-Day*, 27 Journal of Comparative Legislation and International Law 1, (1945), [www.jstor.org/stable/755098](http://www.jstor.org/stable/755098).

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it needs to be done in a manner which is impartial and reasonable, thereby satisfying all the coparceners and persons who receive it. We also conclude that the rights of the coparceners are not absolute, and while the law does guarantee justice to all coparceners, the laws are hemmed with limitations as well.

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