

**SUIT FOR PARTITION- HOW IT IS AFFECTED, REOPENING AND REUNION IN PARTITION**- Pavitra Somani<sup>1</sup>**ABSTRACT**

*Partition refers to the act of dividing. According to Webster's Law 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.<sup>2</sup>*

*This article is written on the topic Suit for partition, how is partition effected, re-opening and reunion in partition is divided into phases. The first phase elaborates on the subtopic of suit for partition by going to the court of law by filing a plaint for partition suit. It discusses about who can file the suit for partition and who cannot as there is no statute that mandates the process, therefore it is stated in the Indian Law that anyone can issue the suit for partition in the court of law. It also talks about the procedure to be followed in India for the filing of a partition suit.*

*The second phase of the article talks about the modes through which a partition of the property of the joint status can be severed or divided amongst the coparceners. It mentions different modes like the partition can be effected by mere declaration, suit for partition etc according to the laws in India for the partition under the family law.*

*The third phase deals with the re-opening of the partition. Although once a thing is broken it cannot be attached together but there are always exceptions to everything. Here after the rule of divide and share a partition can be reopened in certain cases by adopted son, minor coparcener, absentee coparcener, etc. but the reopening of the partition can be done by the coparceners who were originally the part of the first phase of partition.*

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<sup>2</sup> Webster's Law Dictionary, 2006, Page 207

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*The fourth and the last phase elaborates on the reunion in the partition, reunion of the joint status of the Joint Hindu Family. It deals with case laws describing that it can be possible to reopen and reunite the status.*

## **KEYWORDS**

*Joint Hindu Family, Suit, Partition, Property, Agreement*

## **SUIT FOR PARTITION**

The act of the parties of claiming rights over the part of joint estate or property such as land or building and filing the case in the court regarding the disputes which arose during the severance of the property in the family. This is called a Partition Suit.

For the negotiations during the partnership, the family members can formulate a partnership deed following the Partnership Act, 1893. The partnership deed is a document which outlines specific share that a party can claim and is formulated by a court order or due to the negotiation between the parties or the coparceners. To make this deed legal and binding on the parties, it is to be registered with the Sub Registrar's office and have this deed to be drafted on the stamp paper in specific manner.

However, if there are disputes over this sharing and there's a need of settlement then it can be filed in the court as a suit for partition.

When all the coparceners are not ready for the partition and only partial number of the coparceners consented for the partition there a suit for partition is an appropriate action. The coparceners or the co-owners may act the partition through metes and bounds process.

Every type of suit has a specific time limit after which a person cannot approach the court according to the general principle of law. There is a limitation of 3 years from the date from when the right to sue accrues, to get the civil partition suit filed in the court.

### **Who can file a partition suit?**

A suit for partition can be filed by any person (the person may or may not have the vested interest and still will have the right to institute the partition suit.) as no statutory guidelines restrict or mention any guidelines revealing who can or who cannot file a suit for partition.

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All the coparceners or any of the coparceners can institute a suit for the partition. Even when all have not consented to the partition of the joint estate or the severance of the joint estate in such situation it is not necessary that all the heirs need to be present to act the suit for partition.

Even if the person does not have the documents of the property which is to be partitioned, the person can have the certified copies of the same and establish a partition suit.

And also the suit for partition can be filed only and only when there has been a legal notice released and this notice has not been replied or accepted.

### **Documents required to file a suit for partition.**

As the issue of suit for partition is not included in the statutes of the Indian Law, there is no mandatory rules which describes and mentions the documents required for the suit for partition however, the party filing the suit for safer side should have the certified copies of the deeds and also the death certificate of the parent or the grandparents for the purpose of ancestral property. The person should also have a proper description of the property including the details about the Area, location, survey numbers and also the valuation of the property.

### **Procedure of Partition Suit**

First of all, a legal notice has to be issued in order to start with a partition suit on the other owners or the coparceners of the property and they should not have replied or responded to the notice according to the means of the court, here the suit for partition can be filed along with the documents required.

Then the role of the court comes into play where court determines the right and claims on the property made by each of the coparceners after hearing all the arguments and looking into the matter precisely and if the property cannot be partitioned based alone on the suit for partition according to the court then it orders to sit an inquiry, etc. and then the then head of the inquiry evaluates the property and submits to the court his study. This then helps the court to give the decision and also the division of the shares to the respective co owners or the coparceners on the basis of the report and it is partitioned through the method of metes and bound.

### **Steps to file a suit for partition**

- To file a suit or a plaint

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- To draft the power of attorney or vakalatnama
- To pay the fees of the court
- To make the copies of the plaint available to court
- To file the written statements
- To reply the written statements i.e. replication
- To frame the issues to be argued
- Hearing in the court of law
- To take the copy of the order and to be certified

Also the other way for the act of partitioning is family settlement agreement which gives the way to settle the dispute regarding the severance of the joint property. The essentials of this is mentioned in the case of **Kale and Ors. b. Deputy Director of Consolidation and ors**<sup>3</sup>.

### HOW IS THE PARTITION EFFECTED?

The two essentials for the partition are the:

1. Method of physical division by the process of metes and bounds.
2. Severance of the joint status.

These both the steps are very important for the act of partition, the act of dividing to take place in the family amongst the coparceners.

Partition may be effected by various ways such as:

- Partition by declaration: The partition can be done by mere declaration or by the oral or written communication of the intent by the coparcener but the this communication can be dismissed if other co parceners mutually consent to it leading to no partition.

In **Raghvamma v. Chenchemma**<sup>4</sup> and in **Puttorangamim v. Rangamma**<sup>5</sup> it was observed and reiterated that a severance in the status can be brought by mere declaration of the intention for partition.

- Partition by Father: It is based on the ancient doctrine 'Patria Potestas'. The father may divide the joint status or the severance of the property.

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<sup>3</sup> Kale and Ors. b. Deputy Director of Consolidation and ors, 1976 AIR 807, 1976 SCR (2) 202

<sup>4</sup> Raghvamma v. Chenchemma, 1964 AIR 136, 1964 SCR (2) 933

<sup>5</sup> Puttorangamma v. Rangamma, 1968AIR 1018, 1968 SCR (3) 119

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According to the case *Kalyani v. Narayana*<sup>6</sup>, “a Hindu father can affect a partition under the *Mitakshara Law* even in lifetime of karta and would bound them.”

- **Partition by Agreement:** a partition can be effected by the agreement to sever the joint status also. Partition can be done either in oral or in writing, there can be both kinds of partition, it is not necessary to be in writing.

There is no requirement for registering the written agreement, but if the property is going to get divided by agreement then it has to be compulsorily registered.

- **Partition by Conduct:**

At the time of the severance of the joint status of the property, the coparceners divide the property through the method of metes and bounds and each member or coparcener gets his share i.e. specified. This conduct of dividing the property is relative and varies in cases.

- **Partition by Notice:**

The intention to sever must be mentioned in the notice and also informed to the other coparceners through this notice. The partition may also be effected with the issuance of the legal notice also.

- **Partition by Arbitration:**

In this process an arbitrator is appointed by the coparceners of the property and they mutually decide to arbitrate on the matter of the severance of the joint status. This type of partition then will become operative from the date itself and effect the partition of the property through the mode of arbitration.

- **Partition by Conversion:**

The conversion of any of the coparcener to any religion other than Hindu will lead to severance of joint status but this will not affect the relation of the other coparceners inter se. The person loses his right to be the coparcener.

This will also take place when the coparcener marries someone other than Hindu.

- **Partition by will:**

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<sup>6</sup> *Kalyani v. Narayana*, AIR 1980 SC 1173, 1980 Supp (1) SCC 298, 1980 2 SCR 1130

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According to the Section 30 of the Hindu Succession Act, 1956, there is right to the coparcener to make his interest in the joint status of the family and also use this to separate the status. Therefore he can make a valid partition through his will conferring into it and also mention his interests in it as to donate the property to hospital, ngo, etc.

### REOPENING OF PARTITION

Manu says, *“Once a partition is made, once a damsel is given in marriage and once a gift is made is irrevocable and irretraceable.”*

A partition is also irrevocable. The coparceners after the severance of the joint status gives the specific share and title to each of them and therefore it is generally believed that the partition is irreversible, but there is an exception to that principle.

- **Fraud**

If at any instance any of the coparcener has taken an unfair advantage in division of the property by the means of fraud upon the other coparcener, a partition may be re-opened.<sup>7</sup>

If there has been no fraud reported or pleaded in the initial plaint, then in a partition suit it cannot be allowed to change after the plea that the partition was fraudulent<sup>8</sup>.

When one or more coparceners hide the facts during the partition which are material to the act of severance and gain unfair advantage, the decree of partition can be set aside as given in the case of a widow where her rights were abandoned, the partition decree was set aside, **Santosh v. Jagatram**<sup>9</sup> or it can be reopened on the discovery of the fraud by the coparceners or co-owners as given in the case of **Bhishambar v. Lala Amar**<sup>10</sup> but the fraud cannot be added to the plea after the initial stage.<sup>11</sup>

- **Mistake**

The partition can be reopened if the allotted property did not belong to the coparcener or it was mortgaged or was not owned by the family but a stranger was the owner.<sup>12</sup>

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<sup>7</sup> Moro Vishvanath v. Ganesh, (1873) 10 Bom HC 444

<sup>8</sup> Raghunath Tiwary v. Ramakanth Tiwary, AIR 1991 Pat 145

<sup>9</sup> Santosh v. Jagatram, (2010) 3 SCC 251

<sup>10</sup> Bhishambar v. Lala Amar, AIR 1937 PC 105

<sup>11</sup> Raghuyath Tiwary v. Ramakant Tiwary, AIR 1991 Pat 145

<sup>12</sup> Maruti v. Rama, (1897) 21 Bom 333

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Also if any of the family members of the joint family may be left out from the coparcenary status, they can be subjected to partition later under the mistake.

In the case of **Ratnam Chettiar v. Kuppuswami**<sup>13</sup> also it was held that mistake can be a factor leading to reopening of the partition.

- Disqualified coparcener

Any of the technical constraints may lead to the disqualified coparcener to get the share at the time of partition but once his status as a qualified coparcener is established again, he then could have the share in the property.

- Son in womb

If no shares in the property during the severance of the joint status or division of the property were allotted to the son in the womb, then this partition can be re opened, this would take place even if unjust or unfair share was allotted for him.

- Adopted son:

The adopted son can also reopen the partition. After the death of the coparcener if the widow adopts son, he will be permitted to reopen the partition.

- Absentee Coparcener:

If no share is allotted to any of the coparcener and he was absent during the partition, he can reopen the partition for his specific share of the property with joint status.

- Minor Coparcener:

If the minor can establish the partition he is permitted to reopen the partition if at the time of partition he was a minor coparcener and had been allotted less, or unfair and unjust share.

He can also open the partition even if there has been no occurrence of fraud, misrepresentation or undue influence.

## REUNION IN PARTITION

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<sup>13</sup> Ratnam Chettiar v. Kuppuswami, AIR 1976 SC 1

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*“He who, being once separated, dwells again through affection, with father, brother, or a paternal uncle, is termed reunited with him.”* Was said in the texts of Brihaspati, a leading text on reunion.

A reunion in partition can only take place between the parties who were the coparceners originally during the partition was made.<sup>1415</sup>

A reunion can take place with father, brother or a paternal uncle, as gen by the Mitakshara school of Hindu law and also according to the Dayabhaga school of Hindu law.

Whereas under the other schools such as Mithila School of Hindu law, the terms such as father or brother or paternal uncle were taken to be illusion and therefore the reunion was allowed between the parties who were originally in the act of partition.

It was observed in the case of **Bhagwan Dayal v. Reoti Devi**<sup>16</sup> that *“if a Joint Hindu Family separates, the family or any member of it may agree to reunite as a Joint Hindu Family.”*

Also it is to always be checked out that the parties who were originally involved in the partition could only be subject to the reunion according to the Privy Council as held in the case of **Ram Narain v. Mst. Pan Kuer**.<sup>17</sup>

For the reunion to take place there should be the intention for the same, the parties must have the intention for reunion in estate and interest.

Reunion does not necessitate writing of the same, it can also be performed verbally. There should always be conclusive proof of the reunion.<sup>18</sup>

And also a minor cannot initiate the reunion as he is not competent to do so as he is not competent to carry on a contract. The reunion will take place only when the parties decide to reunite their estate and interest through having and intention.

## CONCLUSION

This Article is the theoretical interpretation and an explanation of the concept of partition especially under Hindu Law. The act of dividing or the severance of the joint status is partition and it can be affected through various modes. It also can be said that the partition

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<sup>14</sup> Bala Bux v. Rukhma Bai,(1913) 130 IA 130

<sup>15</sup> B. C. Naik v. Bhaba Bewa AIR 1972 Orissa 72

<sup>16</sup> Bhagwan Dayal v. Reoti Devi, 1962 AIR 287, 1962 SCR (3) 440

<sup>17</sup> Ram Narain v. Mst. Pan Kuer, (1935) 37 BOMLR 144

<sup>18</sup> Bhabgati v. Murlidhar, 1943 A.L.J 328 P.C

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can be reopened once acted on and the joint status of the coparceners can also be reunited in the partition.

Therefore, it can be concluded that the suit for a partition can be instituted by any person except the persons not competent to perform such act and also the rule of divide and share can also be restored.



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