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**PARTITION: MEANING, SUBJECT MATTER OF IT, DIVISION OF RIGHTS, DIVISION OF PROPERTY AND PERSONS ENTITLED TO DEMAND IT**- Pavitra Somani<sup>1</sup>**ABSTRACT**

*“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, written on the topic- Partition: Meaning, Subject matter of it, Division of rights, Division of Property and persons entitled to demand it, is divided into parts. The first part comprises of the meaning of the word partition by law dictionary and interpretation of the word through them and also by textual wordings of old Hindu traditional schools which define the word partition as being an act of severance or diving the joint status on the estate. The second part guides us through the subject matter or the property and about its divisibility and indivisibility. This divisibility or indivisibility is based on the very nature of the property.<sup>3</sup> This feature has also been stated by many books and personalities such as Vijneshwara, Smritikars etc., some of which consist the dwelling houses, temples, idols, etc. The third part talks about the stages of partition which include the Division of Rights and Property and the fourth part tells about the various modes by which a partition can be initiated which includes partition by father on the mutual consent. And the last part talks about the persons who are entitled to demand the partition and ask for the share in the joint property which has been asked to be partitioned. According to the law, every coparcener has the right to demand and ask for the share and entitle it in the partition or the act of*

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<sup>1</sup> 4th year BBA LLB (Hons.) Student at University of Mumbai Law Academy, Kalina Campus

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

<sup>3</sup> Ashanullah vs Kali Kinkur Kur And Ors., (1884) ILR 10 Cal 675

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*severance. Also, this article talks about the recent judgments which give the right to a woman to have and demand a share in the property of her father even if he is not alive. This is accompanied along with the contrary judgments which did not allow women to the coparcener. This landmark judgment has initiated the issue of gender equality which women have been put far in our society.*

## **KEYWORDS**

*Partition, Property, Division of rights, subject matter, Dayabhaga school of law, Mitakshara school of Law*

## **INTRODUCTION**

Partition laws in India under the Family law are very wide. These laws deal with severance of the joint status on the estate of the coparceners. These laws help in clarifying the properties which are divisible and the properties which are not divisible and reduce the chances of ambiguities. Partition under the Family Law is mainly done in two ways, De facto and De jure. Partition is an eventuality in the lineage of a joint family.

## **MEANING**

“The Act of dividing” is called Partition. The severance of the joint status or interest and actual division of property is called partition. This is an act through which the coparceners sever their relations with the joint family. The share of the coparcener or coparceners is uncertain before the partition but in the aftermath of the partition, the share becomes definite and specific and is allotted to respective members.

Partition is *“the act of dividing: especially the division of real property held jointly or in common by two or more persons into individually owned interests.”*<sup>4</sup>

It is the division of real and ancestral property amongst the coparceners. After the partition, they can enjoy their individual share in the estate and also get their geographical portion of the former joint property.

## **PARTITION UNDER THE HINDU LAW**

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<sup>4</sup>Black’s Law Dictionary, Edition 7, Page 1197

A partition is an event where the joint status of a Hindu Joint Family comes to an end. For partition, there must be at least two parceners in Hindu Joint Family as the property needs to be divided among two or more people.

Different rules applied for partition under two schools of Hindu Law:

### **THE DAYABHAGA SCHOOL OF HINDU LAW**

Partition is the division of property in accordance with the specified share of the coparcener, according to the Dayabhaga Law.

The division of property will be made according to the specified shares of the coparceners. In this division, the share in an ancestral property through the birth and death of the coparcener does not fluctuate. The share in this is fixed or ascertained and definite.

Division of property according to the specified share of coparceners is also known as partition by metes and bounds.

### **FEATURES OF DAYABHAGA COPARCENARY**

- There is a determined share or definite share held by each heir under Dayabhaga.
- The sons do not acquire interest by birth under Dayabhaga law.
- The disposition of the ancestral property by a father with the consent of the coparceners is possible.
- A female gets a chance limited to certain conditions to be a coparcener according to the Dayabhaga law.
- During the lifetime of the father, the sons cannot claim their rights over the ancestral property.
- There is an exclusiveness of possession over the joint family property.

In the case of **Commissioner of Wealth Tax, West Bengal v. Bishwanath Chatterjee and Ors**<sup>5</sup>. It was stated that “*Dayabhaga law is the unity of possession. Every coparcener takes a defined share in the property, and he is the owner of that share. That share is defined immediately the inheritance falls in. It does not fluctuate with births and deaths in the family.*”

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<sup>5</sup>Commissioner of Wealth Tax, West Bengal v. Bishwanath Chaterjee and Ors.1976AIR 1492, 1976SCR (3)1096

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## THE MITAKSHARA SCHOOL OF HINDU LAW

Under the Mitakshara law, it is the adjustment of various diverse interests regarding the whole, by distributing them into aggregate portions. It means the division should be done like division of status as the share in the ancestral property can fluctuate through the birth and death of the coparceners.

Lord Westburn has stated two stages of partition which fall under the Mitakshara Law:

- Division of Right
- Division of Property

The Supreme Court in the judgment of **SBI v. Ghamandi Ram**<sup>6</sup> observed a developed meaning of coparcenary under the Mitakshara school.

### FEATURES OF MITAKSHARA COPARCENARY

- In this school of coparcenary each member has the ownership of the entire property conjointly, till the partition, along with the rest. There is a unity of ownership, no one can be denied the share.

In the case of **Thammavenkat Subbamma v. Thamma Ratamma**<sup>7</sup>, the Supreme court observed that unity of ownership is an essential feature of the Mitakshara school.

- The male descendants up to the third generation of person can acquire on birth the ownership of ancestral property.
- The descendants can demand partition anytime.
- The property cannot be alienated unless it is necessary together with the consent of coparceners.
- The deceased person's interest lapses to his survivors after his death.
- Community interest prevails in coparcenary. The Privy Council also mentioned "*there is a community interest and unity of possession between all members of the family.*"

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<sup>6</sup>SBI v. Ghamandi Ram, 1969 AIR 1330, 1969SCR (3) 51

<sup>7</sup>Thammavenkat Subbamma v. Thamma Ratamma, 1987 AIR 1775, 1987 SCR (3) 236

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- Females are a part of a joint family, but they are not members of the Mitakshara coparcenary.

In case of **Munnilal Mahto and Ors. v. Chandrashekhar Malito**<sup>8</sup>, the court held that if any coparceners gives the property as a gift it would be void.

### TYPES OF PARTITION

1. **De jure Partition:** When the breakdown of community interest takes place and the property is divided and converted into a fixed share or there is the severance of joint status with no scope of the doctrine of survivorship, this partition is called the De jure partition.
2. **De facto Partition:** When the unity of possession in the joint status is broken by the actual division of property and exclusive possession starts, and a share is specified and fixed<sup>9</sup>, this type of partition is known as the De facto partition. This partition is also known as partition by metes and bounds.

### SUBJECT MATTER OF PARTITION

According to the general rule the entire joint family property can be divided amongst the coparceners and the coparcenary property can be divided, yet there are some properties, which due to their nature are incapable of being divided like the dwelling house, staircase, well, common way etc.<sup>10</sup>

There can be adjustments made in case of the properties that cannot be divided like the coparceners can use them in turns or jointly, can be sold and share can be divided or be allotted to the share of a coparcener and its value be adjusted.

The partition which is done without lowering the intrinsic value of the property, such partition should compulsorily be made. But if the intrinsic value of the entire property cannot be kept due to partition then the coparceners should be given the monetary value for it, in place of their share.

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<sup>8</sup>Munnilal Mahto and Ors. v. Chandrashekhar Malito, AIR 2007 Pat 66

<sup>9</sup>Elayat Karthiyayini Kunchi Amma v. Minakshi Amma and Ors., 160 Ind Cas 594, (1936) 70 MLJ 114

<sup>10</sup>Mitakshara, I, IV, 25.

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All the movable and immovable property of the joint family should be partitioned and each coparcener should get his share in both the properties. The share of the immovable property depends on the nature of the property and also the number of coparceners in the family.

### **PROPERTIES WHICH CAN NOT BE DIVIDED**

The properties which cannot be divided as given in the law are:

- Impartible estates
- Property with indivisible nature
- Dwelling house
- Family shrines, idols<sup>11</sup>, temples<sup>12</sup>
- Wells, tanks, staircases
- Common wells, etc.

Also as the Manu stated, *“a dress, a vehicle, ornaments, cooked food, water and female slaves, property destined for pious use and sacrifices and a pasture ground, they declare to be indivisible or separate property of a member”*<sup>13</sup>

*“Water or reservoir of it, as well or the like, not being divisible, must not be distributed by means of value but is to be used by co heirs by turns.”* According to Vijneshwara.

### **DIVISION OF RIGHT**

According to Lord Westburn, this is the first stage of partition under the Mitakshara Partition.

It means ascertainment and fixation of shares which is specified to the coparcener with an intention to become entitled.

### **DIVISION OF PROPERTY**

It is the second stage of partition under the Mitakshara partition according to Lord Westburn.

It means assigning the share of the joint estate and actually making off their individual shares.

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<sup>11</sup>Damodar v. Uttarma, 1893 17 Bom. 271

<sup>12</sup>Dattatraya v. Prabhakar, 1937 Bom. 202

<sup>13</sup>Manu, IX, 219.

Also under the Dayabhaga law division of property means the division of the estate in accordance with the specific share of a coparcener.

### MODES OF PARTITION

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

In **Raghvamma v. Chenchemma**<sup>14</sup> and in **Puttorangamim v. Rangamma**<sup>15</sup> it was observed and reiterated that 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.

According to the case **Kalyani v. Narayana**<sup>16</sup>, "*a Hindu father can affect a partition under the Mitakshara Law even in the lifetime of karta and would bound them.*"

- **Partition by suit:** A property can also be partitioned by the suit. The joint status gets disrupted even if only a partition suit has been instituted and the joint status is immediately severed.

### PERSONS ENTITLED TO DEMAND PARTITION OR SHARE IN PARTITION

Each and every partition can demand and also has a right to partition and entitle to the share of the partition. However, some of the coparceners do have qualified or restricted rights to enforce partition.

- **Father:** Father has the power to make the partition also the partition of the property between his sons, the condition being that he has to make the partition only when he is alive and cannot do this by a will after his death. The father has to act in bona fide interest and if the partition is made by any mala fide intention, a suit can be filed. The allotment of the property must be equal and fair and the father should not favour one against the others.

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<sup>14</sup>Raghvamma v. Chenchemma, 1964 AIR 136, 1964 SCR (2) 933

<sup>15</sup>Puttorangamma v. Rangamma, 1968 AIR 1018, 1968 SCR (3) 119

<sup>16</sup>Kalyani v. Narayana, AIR 1980 SC 1173, 1980 Supp (1) SCC 298, 1980 2 SCR 1130

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- **Son, Grandson, Great- grandson:** The coparceners who are of sound mind and are major are capable of demanding partition irrespective of whether they are sons, grandsons or great-grandsons. After the demand is made with or without reasons, the Karta has to make the act of partition be performed.
- **Son born after Partition:** In this case, the partition will be reopened and the share can be given to the son/daughter born after the partition as he also has the right to have a share in the property.
- **Minor:** A minor cannot definitely ask for partition but his share will surely be reserved for him and if this share is not reserved or is unfairly distributed to him a suit can be filed on behalf of the minor.
- **Adopted child:** In the Hindu law, natural child and adopted child were treated differently in the share of the partition before 1956 but after the codification of The Hindu Adoption and Maintenance Act, 1956, the natural child and adopted child are to be treated same for the partition and also other titles.
- **Daughter:** After the amendment made in the Hindu Succession Act in 2005, the daughters can also ask for partition and also for the equal share as the share of the son.

In the case of **Prakash & Ors. v. Phulavati & Ors.**<sup>17</sup>, the bench unanimously held that *“Accordingly we hold that rights under the amendment are applicable to living daughters of living coparceners as on 9<sup>th</sup> September 2005 irrespective of when such daughters are born.”*

In the case of **Pachi Krishnamma v. Kumaran**<sup>18</sup>, the daughter failed to get her to plead the custom of getting an equal share as the son in the partition.

Also in the case **Danamma & Anr. V. Amar & Ors**<sup>19</sup>, it was held that “Daughters have equal rights in ancestral property, even if born before enactment of Hindu Succession Act.”

Also in a significant judgement passed by the Supreme Court on 11<sup>th</sup> August 2020, the bench of justice Mishra, justice Arun Mishra and justice M R Shah pronounced the judgement of the case **Vineeta Sharma v. Rakesh Sharma**<sup>20</sup> and said *“Daughters must be given equal rights. The daughter shall remain a coparcener throughout life, irrespective of whether her father is alive or not.”* Which is an issue that was brought up by Section 6 of the Hindu Succession Act

<sup>17</sup>Prakash & Ors. V. Phulavati & Ors, 2016 2 S.C.C. (36)

<sup>18</sup>Pachi Krishnamma v. Kumaram, 1982 Ker. 137

<sup>19</sup>Danamma & Anr. V. Amar & Ors. (Civil appeal nos. 188-189 of 2018)

<sup>20</sup>Vineeta Sharma v. Rakesh Sharma, 11 August 2020

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in the 2005 Amendment. Justice Mishra also noted and had a view that *“A son is a son until he gets a wife. A daughter is a daughter throughout her life.”*

## CONCLUSION

This Article is the theoretical interpretation and an explanation of the concept of partition, especially under Hindu Law. The word Partition simply means the act of dividing or the severance of the joint status of the coparceners. The partition is defined in different ways under various definitions, scripts and the old traditional schools of Hindu law especially the Dayabhaga School of Hindu Law and Mitakshara School of Hindu Law.

Therefore it can be concluded that each property which is governed in the coparcenary can be partitioned except some of which by their very nature cannot be divided and also daughters and sons have equal rights on the ancestral property which can be partitioned.

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