

## **PARTITION UNDER HINDU LAW**

In order to obtain insight into the process of re-opening of partition, it is vital to understand what the process of partition in itself entirely entails. A partition is a calculated division of family property amongst its members, thereby concluding the joint status of such family. Once the partition is successful, the particular family ceases to exist as a joint family and becomes a nuclear family. Through this process, various coparceners of property can attain their fixed shares as a coparcener.

The Mitakshara school of thought compares partition to be a severance of status or interest, amidst family. Mere division of property between coparceners does not amount to partition, but the complete severance of status of being a member of the joint family constitutes partition in its true sense. Furthermore, the process of partition can be administered in two methods:

**Total Partition:** Through this process, the family property in its entirety is divided in between all coparceners.

**Partial Partition:** The family may encounter a particular occurrence wherein only a few members of the joint family go out on partition while the others remain members of the family. In this case, the remaining members maintain joint status while those that leave get their share.

In order to satisfy prerequisites for either of the aforementioned processes, there is also a requirement of the fulfillment of two necessary conditions that give rise to partition. They are:

- Intention to separate from the rest of the family within the minds of members or member.
- External declaration of such intention to separate from the rest of the family. This declaration entails expressing the intention of partition vividly through verbal or written communication.

## **MODES OF PARTITION UNDER HINDU LAW**

There can be several modes by which a partition (Modes of partition under Hindu Law ) can undergo such as

- Partition by father during his lifetime: the Karta of the family take partition then it came into existence.

- Partition by suit: from the moment the suit is filed clearly indicates the intention to severance, then partition was held when the suit was instituted.
- Partition by agreement: from the date of signing the agreement, severance of status get started. And one more type of partition includes the agreement of arbitration in which all member of the joint family come into an agreement in which they appointed arbitrator that distributes or divide the property.
- Partition by notice
- Partition by will
- Oral partition
- Partition by one coparcener through his unilateral declaration.
- By conduct, when food, worship and business are different.
- Partition on death also called Notional Partition
- Partition on conversion and or by marrying a non-Hindu: if anyone converts their religion then automatically severance of interest take place from the date of conversion but they entitled to take their share from that property, and if a person married under special marriage act 1954 so then automatically severance of interest took place from the date of marriage but in this case also they entitled to get their share.

### **RE-OPENING OF PARTITION**

Although, according to Hindu Law and as per the teachings of Manu, a partition once made stands to be irreversible and irrevocable. However, to cater to the public interest, certain exceptional situations have been allowed by law as cases under which an application to re-opening of partition can be applied.

- **Fraudulent Partition:** There are grounds to re-open partition in case a coparcener has unfairly obtained an advantage in the distribution of property through exercising fraudulent behaviour upon other coparceners. Such behaviour may include misrepresenting worthless assets as those with value, or concealment of property by

the person exercising said fraudulent behaviour. The affected coparcener in furtherance has a right to claim the reopening of partition thereby.

- **Person in the womb:** Considering how the right to partition is retained by sons, grandsons and great-grandsons, in case a son has been conceived at the time of partition and born after, he too can claim his right to property as a coparcener. In case the family members attain knowledge of such pregnancy, the partition has to be delayed until his birth, or, his share to the property needs to be reserved. In hindsight, however, where no such reservation is made to the son in the womb, he can demand for re-opening of partition after birth through any external representation.
- **Existence of Adopted Son or Sons:** Section 12 of Hindu Adoption and Maintenance Act, 1956 prescribes the right of adopted sons to be coparcener to property at the time of partition. Birth of biological son after adoption does not take away the right of an adopted son and therefore, in case he does not get his share of the property after partition, he can claim re-opening of partition through any representation.
- **Coparcener disqualified:** In some cases, a coparcener is held un-entitled to his share at the time of participation due to certain disqualification of technical restraint, in which case, he can re-open partition once said disqualification ceases to exist upon him.
- **Absence of valid Coparcener:** In case a coparcener holding right to share in the property is absent at the time of partition, and no share is allotted in his name, he too has a right to ensure re-opening of partition.
- **Coparcener in Minority:** If, at the time of partition, a coparcener being a minor does not have his interests accounted for, he has the option of re-opening partition. There is no requirement for there to have been fraud, misrepresentation or undue influence for a minor coparcener to re-open partition, in case the partition itself is proven to be unfair to the minor's interests and opposing his personal benefit.
- **Addition of Property after Partition:** In case some property is mistakenly or deliberately left out, lost or seized at the time of partition, the partition can be re-opened in case such properties re-surface. However, it is not necessary to re-open partition for their distribution; in the sense that, if they can be viably distributed within coparceners without re-opening of partition, there is no necessity in disturbing the prior process

## **REUNION**

In furtherance of re-opening of partition comes the reunion of a family; a state in which the particular family members resume their status as a joint-family which had been lost after partition. A reunion is the only way in which the joint-status of family can be re-established amongst family members. However, only those members of the family that originally had joint status in the property are eligible to reunite with each other.

The primary prerequisite for administering reunion is the intention of parties to reunite in the estate as well as a common interest. That also entails that simply choosing to live under one roof without the intention of regaining joint status in property shall not constitute a valid reunion. It is also necessary that the communication is communicated vividly, with each separate coparcener giving individual consent to the reunion.

Once a family reunites, the foremost effect of such reunion is the resolution of reunited members to their prior status as members of a joint family under Hindu Law. In consequence, the property divided to each individual coparcener is also pulled back as a collective property of the joint family wherein the members also regain their status of undivided coparceners. A complete restoration of the family and its members along with their status is triggered by the reunion, so as to make sure that there is no legal difference within the family from before prior partition.

It is essential that parties have the intention to reunite in estate and interest again. A reunion can be made only between the parties who actually partitioned at that time. A reunion can only take place between father and sons, brothers and between paternal uncle and nephew.

It is not required to have the existence of the similar property which were separated since the reunion is for love and affection of family members with the desire of living together.